RECORD, CASE Nos. 15,095 and 15,103.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1125.

PHINEAS PAM-TO-PEE AND 1,371 OTHER POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA, APPELLANTS,

vs.

THE UNITED STATES.

FILED AUGUST 2, 1892.

TERM No., 1133.

THE POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA, APPELLANTS,

vs.

THE UNITED STATES.

FILED AUGUST 16, 1892.

APPEALS FROM THE COURT OF CLAIMS.

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APPEALS FROM THE COURT OF CLAIMS.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 9, 1892.

	Original.	Print.
Petition No. 16743, filed April 14, 1890	1	1
Traverse, filed May 3, 1890	16	10
Petition No. 16842, filed November 5, 1890	17	10
Traverse, filed November 13, 1890	45	29
Findings of fact, filed March 28, 1892	46	29
Opinion of the court, filed March 28, 1892	52	36
Final judgment, June 27, 1892	61	45
Claimants' application for and allowance of appeal, July 22, 1892	62	45
Certificate of clerk	63	46
Claimants' application for and allowance of appeal, August 2, 1892	64	46

1 *Petition. Filed April* 14, 1890.

Petition.

To the honorable the chief justice and judges of the United States Court of Claims:

The Pottawatomie Indians of Michigan and Indiana, by the undersigned, their duly appointed agent and attorney, in behalf of all the Pottawatomie Indians of said States, respectfully represent:

First. That this petition is filed and the jurisdiction of this court is invoked under and by virtue of the provisions of the following act of Congress:

An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana.

2 Whereas representatives of the Pottawatomie Indians of Michigan and Indiana, in behalf of all the Pottawatomie Indians of said States, make claim against the United States on account of various treaty provisions which, it is alleged, have not been complied with: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the said Pottawatomie Indians of Michigan and Indiana, and to render judgment thereon; power is hereby granted the said court to review the entire question of difference *de novo*, and it shall not be estopped by the joint resolution of Congress approved twenty-eighth July, eighteen hundred and sixty six, entitled "Joint resolution for the relief of certain Chippewa, Ottawa, and Pottawatomie Indians," nor by the receipt in full given by said Pottawatomies under the provisions of said resolution, nor shall said receipt be evidence of any fact except of payment of the amount of money mentioned in it; and the Attorney General is hereby directed to appear in behalf of the Government, and if the said court shall decide against the United States the Attorney General may within thirty days from the rendition of the judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered the said Pottawatomie Indians may also appeal to said Supreme Court: Provided, that the appeal of said Pottawatomie Indians shall be taken within sixty days after the rendition of said judgment and the said courts shall give such cause precedence.

SEC. 2. That said action shall be commenced by a petition stating the facts on which said Pottawomie Indians claim to recover, and the amount of their claims, and said petition may be verified by

3 a member of any "business committee" or authorized attorney of said Indians as to the existence of such facts, and no other statement need be contained in said petition or verification.

Approved March 19, 1890.

Second. The "questions of difference" between the United States and your petitioners arise from the non-performance by the United States of the obligations assumed under the following treaties concluded between the United States and the Pottawatomie Indians (as will hereafter more fully appear), dated August 3, 1795; September 30, 1809; October 2, 1818; August 29, 1821; October 16, 1826; September 20, 1828; September 20, 1828; July 29, 1829; October 20, 1832; October 26, 1832; October 27, 1832; September 26, 1833; September 27, 1833, and June 17, 1846.

Third. In the year 1795 and subsequently the Government of the United States made treaties with the Ottawa, Chippewas, and Pottawatomie Indians, in which they were formally recognized as distinct nations uniting in the same treaties, but more recently they were known as the United Nation of Pottawatomies, and since 1846 as the Pottawatomie nation. By the provisions of the several treaties the Indians ceded lands to the Government, and the Government paid for the same in other lands, in money, and in goods and pledged annuities—some for a short and some for a long period.

On the 26th of September, 1833, a treaty was made by which the nation ceded to the United States about 5,000,000 acres of land lying on the western shore of Lake Michigan, for which the Government gave and pledged a satisfactory consideration.

A part of the nation did not at that time agree to the treaty, but the next day, being the 27th of September, 1833, those who had declined and were known as the chiefs and headmen of said
4 United Nation of Indians, residing upon their reservations of land lying in the Territory of Michigan, south of Grand river, entered into a treaty supplementary to that which had been executed the previous day, by which they became parties to the main treaty, upon terms specified in the supplementary treaty, one of which permitted them to remove to northern Michigan and declared that in case of removal they should be entitled to share in all annuities payable under former treaties and that arising from the sale of the reservation on which they then resided.

The Commissioner of Indian Affairs, in a letter addressed to the Secretary of the Interior, dated November 15, 1862, said that the main tribe removed to their new homes, west of the Mississippi, and the Catholic portion, your petitioners and their forefathers, to the northern parts of Michigan, which is evidence that they complied with the condition upon which they were to share in the annuities due the nation.

This Government has made twenty-four different payments to your petitioners on account of their annuities since the treaty of 27th September, 1833.

The nation was permitted to remain on the lands they ceded to the Government until 1836 and received all their annuities there, of which these petitioners received their portion down to and including the year 1835, prior to which time your petitioners make no claim against the Government.

Fourth. Your petitioners were parties to all treaties made by the United States with the Pottawatomie nation of Indians, and were

entitled to share *per capita* in all annuities secured to said nation by said treaties, and, that no doubt should be permitted to cloud the title of your petitioners to share in the annuities secured by these several treaties, the supplementary treaty, dated September 27, 1833, was framed and ratified between the United States and your petitioners, the caption and first and last articles of said treaty being in the following words:

5 "Articles supplementary to the treaty made at Chicago, in the State of Illinois, on the 26th day of September, 1833, between George B. Porter, &c., commissioners on the part of the United States, of the one part, and the United Nation of Chippewa, Ottawa, and Pottawatomie Indians, concluded at the same place on the 27th day of September, 1833, between the said commissioners on the part of the United States, of the one part, and the chiefs and the headmen of said United Nation of Indians, residing upon the reservations of land situated in the Territory of Michigan, south of Grand river, of the other part."

"Article 1. The said chiefs and headmen cede to the United States all their land situated in the Territory of Michigan, south of the Grand river, being the reservations at Notawasepe of four miles square, contained in the third clause of the second article of the treaty made at Chicago on the 29th day of August, 1821; and the 99 sections of land contained in the treaty made at St. Joseph on the 19th day of September, 1827, and also the tract of land on the St. Joseph river, opposite the town of Niles and extending to the line of the State of Indiana, on which the villages Topenebee and Pokagon are situated, supposed to contain about 49 sections."

Supplementary article to the treaty of September 27, 1833.

"On behalf of the chiefs and headmen of the United Nation of Indians, who signed the treaty to which these articles are supplementary, we hereby, in evidence of our concurrence therein, become parties thereto."

"And, as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that, in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the
6 reservation on which they now reside, shall be paid them at L'Arbre Croch. Vol. VII (p. 542–'5), U. S. Statutes at Large."

Fifth. Your petitioners, relying upon the treaties aforesaid, claim their just proportion of the perpetual annuity of one thousand dollars, granted by the 4th article of the treaty between the United States and the tribes of Indians known as Wyandotts, Pottawatomie, and others, dated August 3, 1795, in the following words: "7th. To the Pottawatomies the amount of one thousand dollars." See United States at Large, vol. VII, p. 51.

Sixth. Your petitioners also claim, on the same grounds, their

just proportion of a perpetual annuity of five hundred dollars, granted by the 3d article of the treaty between the United States and the tribes of Indians called the Delawatty, Pottawatomies, &c., dated September 30, 1809, in the following words: "And to the Pottawatomies a like (permanent) annuity of five hundred dollars." Same vol., p. 114.

Seventh. Your petitioners also claim, on the same grounds, their just proportion of a perpetual annuity of two thousand five hundred dollars, granted by the 3d article of the treaty between certain commissioners of the United States and the Pottawatomie nation of Indians, dated October 2, 1818, in the following words: "Article 3. The United States agree to pay to the Pottawatomies a perpetual annuity of two thousand five hundred dollars in silver." Same vol., p. 185.

Eighth. Your petitioners also claim, on the same grounds, their just proportion of an annuity of five thousand dollars, payable for twenty years, granted by the 4th article of the treaty between the commissioners of the United States and the Ottawa, Chippewa, and Pottawatomie nations of Indians, dated August 29, 1821, in the following words: "And the United States also engage to pay to the Pottawatomie nation five thousand dollars in specie, annually for the term of twenty years." Vol. VII, p. 220.

7 Ninth. Your petitioners also claim, on the same grounds, their just proportion of an annuity of two thousand dollars for twenty-two years, granted by the 3d article of the treaty between the commissioners of the United States and the chiefs and warriors of the Pottawatomie tribe of Indians, dated 16th of October, 1826, in the following words: "Article 3. In consideration of the cessions in the first article, the United States agree to pay to the Pottawatomie nation an annuity of two thousand dollars in silver for the term of twenty-two years." Same vol., p. 296.

Tenth. Your petitioners also claim, on the same grounds, their just proportion of a permanent annuity of two thousand dollars, granted by the 3d article of the treaty between the commissioners of the United States and the Pottawatomie tribe of Indians, dated September 20, 1828, in the following words: "Article 2. In consideration of the cessions aforesaid, there shall be paid to the said nation and additional permanent annuity of two thousand dollars." Same vol., p. 317.

Eleventh. Your petitioners also claim, on the same grounds, their just proportion of an additional annuity of one thousand dollars, granted by the same article of the same treaty for the term of twenty years, in the following words: "And also and additional annuity of one thousand dollars for the term of twenty years." Same vol., p. 317.

Twelfth. Your petitioners also claim, on the same grounds, their just proportion of a permanent annuity of sixteen thousand dollars, granted by the 2d article of the treaty between the commissioners of the United States and the United Nations of Chippewa, Ottawa, and Pottawatomie Indians, &c., dated July 29, 1829, in the following words: "Article 2. In consideration of the afore-

said cessions of land, the United States aforesaid agree to pay to the aforesaid nations of Indians the sum of sixteen thousand
8 dollars annually forever in specie." Vol. VII, p. 320.

Thirteenth. Your petitioners also claim, on the same grounds, their just proportion of an annuity of fifteen thousand dollars for twenty years, granted by the 3d article of the treaty between the commissioners of the United States and the chiefs and headmen of the Pottawatomie tribe of Indians, dated October 20, 1832, in the following words: "Article 3. In consideration of the cession in the 1st article the United States agree to pay to the aforesaid Pottawatomie Indians an annuity of fifteen thousand dollars for the term of twenty years." Same vol., page 379.

Fourteenth. Your petitioners also claim, on the same grounds, their just proportion of an annuity of twenty thousand dollars for twenty years, granted by treaty between commissioners of the United States and the chiefs, headmen, and warriors of the Pottawatomie Indians, dated 26th October, 1832, in the following words: " In consideration, &c., the United States agree to pay to the Pottawatomies an annuity for the term of twenty years of twenty thousand dollars." Same vol., p. 395.

Fifteenth. Your petitioners also claim, upon the same grounds, their just proportion of an annuity of fifteen thousand dollars for twelve years, granted by treaty between the same parties, dated October 27, 1832, in the following words: Article 4. " In consideration of the aforesaid cession the United States will pay fifteen thousand dollars annually for twelve years." Same vol., p. 401.

Sixteenth. In addition to their just proportion of all former annuities secured to your petitioners by the supplemental treaty of September 27, 1833, p. 445, vol. VII, U. S. Statute, subject to such payments as will be hereinafter particularly acknowledged,
9 your petitioners claim, in consideration of uniting in the treaty of September 26, 1833, and of ceding to the United States by said supplemental treaty of the 27th of September, 1833, one hundred and sixty-four sections of land, on which your petitioners and their ancestors then resided, &c., the sum of forty thousand dollars, to be paid in annuities of two thousand dollars a year for twenty years." See articles supplementary entered into by commissioners of the United States and the chiefs and headmen of the United Nation of Indians residing upon the reservations of land situated in the Territory of Michigan, south of Grand river." P. 442, vol. VII, U. S. Statutes.

Seventeenth. Your petitioners also claim, on the same grounds, their just proportion of an annuity of three hundred dollars granted by treaty between the United States and the Pottawatomie nation, dated the 17th June, 1846, payable in lieu of tobacco, iron, steel. Statutes at Large, vol. VII, art. 10, p. 855. These articles were due under treaties prior to September, 1833, and, when converted into an annuity, it became devisible among the parties entitled to them, your petitioner- among others.

Eighteenth. To exhibit the foregoing claims more fully to the eye, the following tabular statement is presented:

Date of treaty.	Page of treaty.	Page of annuity.	Amount.	Time.
Aug. 3, 1795	(Vol. VII) 49	51	$1,000	Forever.
Sept. 30, 1809	(U. S. Statutes.)	114	500	Do.
Oct. 2, 1818	185	185	2,500	Do.
Aug. 29, 1821	218	220	5,000	20 years.
Oct. 16, 1826	295	266	2,000	22 years.
Sept. 20, 1828	317	317	2,000	Forever.
Sept. 20, 1828	317	317	1,000	20 years.
July 29, 1829	326	320	16,000	Forever.
Oct. 20, 1832	378	379	15,000	20 years.
Oct. 26, 1832	374	395	20,000	Do.
Oct. 27, 1832	399	401	15,000	12 years.
June 17, 1846	(Vol. IX) 55	855	300	Forever.

10 Nineteenth. Your petitioners admit that all annuities due them prior to the year 1836 have been received, but they exhibit a tabular statement, often approved by the Commissioners of Indian Affairs and the Secretaries of the Interior, showing how much is due them from the year 1835 and how much has since been paid them on account by the Government of the United States to the 30th June, 1872. See Senate Report No. 121 (42d Congress, 2d session), by Senator Buckingham; also see Senator Daniel's report, No. 129, 51 Congress, 1st session.

The following exhibit is made in accordance with the construction given to all treaties as herein set forth and shows the amount due the memorialists:

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade to 1856.		Amount due fifth semi-decade to 1861.		Amount due sixth semi-decade to 1866.	Amount due seventh semi-decade to 1871.	Amount due in 1872 for one year.
			Yrs.		Yrs.				
Aug. 5, 1795	$1,000	Perpetual.	5	$5,000	5	$5,000	$5,000	$5,000	$1,000
Sept. 30, 1800	500	Do.	5	2,500	5	2,500	2,500	2,500	500
Oct. 2, 1818	2,500	Do.	5	12,500	5	12,500	12,500	12,500	2,500
Aug. 29, 1821	5,000	20 years							
Oct. 16, 1826	2,000	22 years							
Sept. 20, 1828	2,000	Perpetual.	5	10,000	5	10,000	10,000	10,000	2,000
Sept. 20, 1828	1,000	20 years							
July 29, 1829	16,000	Perpetual.	5	80,000	5	80,000	80,000	80,000	16,000
Oct. 20, 1832	15,000	20 years							
Oct. 26, 1832	20,000	Do.	5						
Oct. 27, 1832	15,000	12 years							
June 17, 1846	300	Perpetual.	5	1,500	5	1,500	1,500	1,500	300
Total				111,500		111,500	111,500	111,500	22,300

11

Treaty.	Annual amount.	Time.	Amount due in 1836.	Amount due first semi-decade to 1841.		Amount due second semi decade to 1846.		Amount due third semi-decade to 1851.	
				Yrs.		Yrs.		Yrs.	
Aug. 5, 1795	$1,000	Perpetual..	$1,000	5	$5,000	5	$5,000	5	$5,000
Sept. 30, 1809	500	Do.	500	5	2,500	5	2,500	5	2,500
Oct. 2, 1818	2,500	Do.	2,500	5	12,500	5	12,500	5	12,500
Aug. 29, 1821	5,000	20 years....	5,0 0	5	25,000	Exp.	.....	.....	.....
Oct. 16, 1826	2,000	22 years....	2,000	5	10,000	5	10,000	1	2,000
Sept. 20, 1828	2,000	Perpetual..	2,000	5	10,000	5	10,000	5	10,000
Sept. 20, 1828	1,000	20 years....	1,000	5	5,000	5	5,000	1	1,000
July 29, 1829	16,000	Perpetual..	16,000	5	80,000	5	80,000	5	80,000
Oct. 20, 1832	15,000	20 years....	15,000	5	75,000	1	15,000	Exp.	....
Oct. 26, 1832	20,000	Do.	20,000	5	100,000	5	100,000	5	100,000
Oct. 27, 1832	15,000	12 years....	15,000	5	75,000	2	30,000	.	....
June 17, 1846	300	Perpetual..	.....	.....	....	.....	.....	5	1,500
Total	.....	.....	80,000	.....	400,000	.....	270,000	.....	214,500

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the bands.
1836	3,846	250	4,090	$80,000 00	$19 56	$4,890 00
1841	3,390	273	3,663	400,000 09	109 20	29,811 60
1846	2,231	269	2,500	270,000 40	108 00	29,052 00
1851	3,914	287	4,201	214,500 00	51 05	14,651 35
1856	3,181	281	3,462	111,500 00	32 20	9,048 20
1861	2,142	304	2,446	111,500 00	45 58	13,856 32
1866	2,202	317	2,519	111,500 00	44 26	14,030 42
1871	2,202	322	2,524	111,500 00	45 60	14,683 20
1872	2,202	322	2,524	22,300 00	8 83	2,844 87
						132,867 93
Add full annuity under treaty September 27, 1833, $2,000 for 19 years						38,000 00
						170,867 96
There were paid the memorialists from the year 1843 to 1863, inclusive, 21 years, $1,587,500 per annum					$33,337 50	
In 1864					1,237 50	
In 1865					1,587 50	
In 1866, in accordance with public act					39,000 00	
						75,162 50
Balance due memorialists						95,705 46
Annuity of $2,844.87 capitation, at 5 per cent. per annum, equals						56,897 50
Due to make final settlement						152,602 96

Add annuities of $2,844.87 from 30th June, 1872, to June 30, 1891 (nineteen years), to make final settlement, $54,152.63.

Twentieth. Your petitioners respectfully represent that the principle upon which the above tables have been constructed has been repeatedly approved by the Commissioners of Indian Affairs, by the Secretaries of the Interior, and by the committees of both
12 houses of Congress. Upon the same basis the Senate has twice and the House has once passed bills appropriating the money to pay your petitioners. Yet your petitioners respectfully submit that upon the face of the above tables the following errors appear:

One annuity of two thousand dollars for the year 1848, granted by treaty of October 16, 1826, is omitted; also one annuity of one thousand dollars for the year 1848, granted by treaty of September 20, 1828, is omitted; also ten annuities of fifteen thousand dollars each for the years 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850,

1851, and 1852, or one hundred and fifty thousand dollars, granted by the treaty of October 20, 1832, are omitted; also an annuity of twenty thousand dollars, granted by treaty of Oct. 20, 1832, for the year 1852, is omitted; also an annuity of fifteen thousand dollars for the year 1844, granted by treaty of October 27, 1832, is omitted, of which annuities, amounting in the aggregate to one hundred and eighty-eight thousand dollars ($188,000), your petitioners are entitled to their proportion, as follows:

Treaty.	Years omitted.	Amount of annuity omitted.	Indians west of the Mississippi: Each semi-decade.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the band.
Oct. 16, 1826	1848	$2,000	2,231	269	2,500	$1,784 80	$ 80	$215 20
Sept. 20, 1828	1848	1,000	2,231	269	2,500	892 40	40	107 60
Oct. 20, 1832	1843	15,000	3,390	273	3,663	41,647 56	12 28	3,352 44
Oct. 20, 1832	1844	15,000	.....	.....	.....	.....	.....	.....
Oct. 20, 1832	1845	15,000	.....	.....	.....	.....	.....	.....
Oct. 20, 1832	1846	15,000	2,231	269	2,500	66,930 00	30 00	8,070 00
Oct. 20, 1832	1847	15,000	.....	.....	.....	.....	.....	.....
Oct. 20, 1832	1848	15,000	.....	.....	.....	.....	.....	.....
Oct. 20, 1832	1849	15,000	.....	.....	.....	.....	.....	.....
Oct. 20, 1832	1850	15,000	.....	.....	.....	.....	.....	.....
Oct. 20, 1832	1851	15,000	3,944	287	4,201	27,950 82	7 14	2,049 18
Oct. 20, 1832	1852	15,000	.....	.....	.....	.....	.....	.....
Oct. 26, 1832	1852	20,000	3,944	287	4,201	18,633 85	4 74	1,366 15
Oct. 27, 1832	1844	15,000	3,390	273	3,663	13,880 70	4 10	1,119 30
		188,000	.....	.....	.....	171,720 13	.....	16,279 87

13 Twenty-first. Your petitioners further represent that the following payments have been made them by the United States since the treaty of September 27, 1833; total, $75,162.50. See letter of E. B. French, second auditor, dated March 27, 1872, and exhibits.

The $1,587.50 was paid to those Pottawatomies residing in Michigan in conformity to and as their proportion of the treaty of July 29, 1829, and the second article of the supplementary treaty of September 26, 1833, for all the years that the same was paid, excepting for the years 1851 and 1865, in which years the treaty of 1833 is not included.

The payment of $39,000 in 1866 was made in conformity to the joint resolution of Congress approved July 28, 1866 (vol. 14, [illegible] 1872 U. S. Stat. at Large, page 370).

In 1843 Robert Stuart paid 253 Indians	$1,587 50
In 1844 Robert Stuart paid 269 Indians	1,587 50
In 1845 Wm. A. Richmond paid 217 Indians	1,587 50
In 1846 Wm. A. Richmond paid 204 Indians	1,587 50
In 1847 Wm. A. Richmond paid 244 Indians	1,587 50
In 1848 Wm. A. Richmond paid 260 Indians	1,587 50
In 1849 Chas. P. Babcock paid 260 Indians	1,587 50
In 1850 Chas. P. Babcock paid 218 Indians	1,587 50
In 1851 Wm. Sprague paid 229 Indians	1,587 50
In 1852 Wm. Sprague paid 214 Indians	1,587 50
In 1853 Henry C. Gilbert paid 219 Indians	1,587 50

In 1854 Henry C. Gilbert paid 236 Indians	$1,587 50
In 1855 Henry C. Gilbert paid 236 Indians	1,587 50
In 1856 Henry C. Gilbert paid 221 Indians	1,587 50
In 1857 A. M. Filch paid 239 Indians	1,587 50
In 1858 A. M. Filch paid 234 Indians	1,587 50
In 1859 A. M. Filch paid 253 Indians	1,587 50
In 1860 A. M. Filch paid 236 Indians	1,587 50
In 1861 De Wit C. Leach paid 235 Indians	1,587 50
In 1862 De Wit C. Leach paid 247 Indians	1,587 50
14 In 1863 De Wit C. Leach paid 246 Indians	1,587 50
In 1864 De Wit C. Leach paid 242 Indians	1,237 50
In 1865 Richard M. Smith paid 232 Indians: principal, in currency, $1,587.50; premium, in gold, $692.24	2,279 74
In 1866 Richard M. Smith paid 338 Indians	39,000 00

The above shows the number of Pottawatomie Indians residing in Michigan in the years indicated who received the amount as shown thereon, as the same appears from the receipt-rolls on file in the Indian Office.

The annuity of $1,587.50, paid your petitioners from 1843 to 1865, was regarded by the commissioners as their just proportion of an annuity of $16,000 pledged by the treaty of 1829 and of the $2,000 made payable annually by the supplementary treaties of September 27, 1833; but the Government has since held a different construction and given your petitioner- their just proportion of all former annuities and the entire annuity of two thousand dollars granted 27th September, 1833.

See letter of Hon. H. M. Teller, Secretary of the Interior, dated February 27, 1883; also letter of Hon. J. D. C. Atkins, Commissioner of Indian Affairs, dated April 6, 1886.

Upon the foregoing statement there appears to be due from the United States to the Pottawatomie Indians of Michigan and Indiana the sum of two hundred and twenty-three thousand and thirty-five dollars and forty-six cents ($223,035.46), and your petitioners demand judgment for said sum.

JOHN CRITCHER,
Attorney for Plaintiffs.

15 John Critcher, the authorized attorney of said Indians (as appears by agreement between said Critcher and the "business committee" of said Indians, dated 29 September, 1887, approved by the Commissioner of Indian Affairs and by the Secretary of the Interior and recorded in the office of the Indian Bureau), being duly sworn, on his oath states that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated and set forth are true, so far as the same are stated on the knowledge of affiant, and that as to the matter- and things therein stated and set forth upon the information and belief of affiant he believes them to be true, and no other assignment or

transfer of said claim or any part of it has been made, within affiant's knowledge.

JOHN CRITCHER,
Attorney for Plaintiffs.

505 D street N. W., Washington, D. C.

Subscribed and sworn to before me this 10th day of April, A. D. 1890.

JOHN CRITCHER, JR.,
[SEAL.] *Notary Public.*

16 *General Traverse. Filed May* 3, 1890.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant- have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney General.

17 *Petition. Filed November* 5, 1890.

To the Court of Claims:

The petition of said Indians respectfully shows—

That your petitioners number 1,372, and their names and residences are as follows:

The following reside in Allegan county, Michigan: Mary Bush, housekeeper; Frank Bush and Foster Bush, her children. Lucy Pokagon, housekeeper; her two children, Joseph and William. Kish-go-qua, housekeeper.

The following reside in Isabella county, Michigan: Wau-je-ge-dah-zo, farmer, and his wife, Car-bay-on. Shaw-wen-ne-ge-shig, farmer; Amy, his wife; their children, Frank and Nancy. Pay-she-ge-shig, farmer, and his wife, Annas. Saws-way, farmer, and his wife, Mary; their children, Mam-que, Na-so-we-di-no-qua, Adah-shawal, Me-day-o-may, Wah-sa-yah-ne-quit, and Charlotte. Sah-gash-je-wa-qua, housekeeper. Nun-way-qua, housekeeper. Shaw-we-ne-ge-she-go-qua, housekeeper. Go-wah-na, housekeeper. Pay-
18 mar-me, farmer. Moses, farmer. Betsy, housekeeper. War-ce-yah-ce-ga, farmer, and his wife, Nancy; their child, Paw-say. Watson, farmer, and his wife, Tambe-qua; their child, Chippe-wa. Agah-ma-we, housekeeper. William, farmer, and his wife, Ne-be-no-qua; their children, Fred, Jane, and Mary. Moses Ash-

quabe, farmer, and his wife, Asusk-kiber; their children, Susan, Julia, Keshe-ge-wau-no-qua, and Charles. Co-war-may, laborer; his children, Jackson, May, Fred, William, Cady, Mannealer, and George. Albert Chick-con, farmer, and his wife, Car-gos-se-no-qua; their child, Alea-yath. Frank Chick-con, farmer, and his wife, Nancy; their children, Min-qua and Alice.

The following reside in Welden Creek, Mason county, Michigan: Amos Green, laborer, and Mary, his wife. Sam Ke-wa-koum, laborer, and his wife Susan. Joh- Eden, laborer. Wah-go-she-qua, housekeeper. Joseph Hall, laborer, and his wife Tah me-si-qua; their children, Ada and Eva.

The following reside in Custer, Mason county, Michigan: Peter Thomas, laborer, and his wife Wah-ma-suh-mo-qua. Ah-shah-mah-nah-wah-too, laborer. Paul Pesh-ne-nee, laborer.

The following reside in Eldridge, Oceana county, Michigan: John Battis, farmer, and his wife Shah-o-nah-bun; his children, Moses, Benedict, Shah-ne-yah, and Ah-be-tah-gick. Ma-ne-gwe, laborer. Nah-gee, laborer. John Ah-she da-yah-sunk, farmer, and his wife, Martha. Peter Ah-she-da-yah-sunk, farmer, and his wife, Anna; their children, Adam and Sha-bun. Nah-gay-kah-wah-me-suh-sah-bay, laborer. Mee-ne-gay Seymour, housekeeper; her child, Angeline. Lewis Buttes, farmer, and Nancy, his wife; his child, Pay-bah-mee. Joseph Battes, laborer, his wife, Margaret; their child, John. Wah-ka-se-no-qua, housekeeper; her son, Isaac. Michael Battes, laborer, and his wife, Mary; their child, Lucy. Mary Ann, housekeeper; her grandchildren, Angeline, Sarah, and Peter.

The following reside in Eaton, Mason county, Michigan: Daniel Pay-quah-nah, laborer; Mah-kah-nah-quash, his child. O-zah-nah, housekeeper; her children, Shah-wah-noos, O-nee-see-nah-go-qua. Me-hah-ja-qua, Pe-tah-wah, and Shoh-be-nee. Nah-ka-o-day, 19 laborer, and his wife Mo-yah. Tah-gwe-she-no-quah, laborer. Ah-nah-quath, laborer. Ma-shee-ke-ya-shee, laborer, and his wife, Ke-ne-we-ge-she-go-qua. Ah-nah-quth-quapay-qua-nah, laborer.

Following reside in Fountain, Mason county, Michigan: Ah-shane-qua Elliott, housekeeper; her children, O-muh-che-gewah and Kah-ba-she-kah-mo. John Tedar, laborer, and his wife, Sin-mo-qua; their children, Wah-wah-som and Edah-wah-je-won. Wa-ge-she-go-mee, laborer.

The following reside in Weldon, Mason county, Michigan: Joseph Green, laborer; his children, John and Charity. Pah-dah-gay-kah-wah, laborer, and his wife, Me-gieh.

The following reside in Branch, Mason county, Michigan: Charley Ah-sette, laborer, and his wife, Pe-de-gah-she-way; their child, Eddie.

The following live on Walpole Island: Nah-o-de-nah, laborer. Pash-ne-nee, laborer.

The following reside in Free-Soil, Mason county, Michigan: John Peter, laborer, and his wife, Tah-de-bah-chim; his child, O-ge-mah-be-see. Sam Bailey, laborer, and his wife, Ke-o-say-qua.

The following reside in Missaukee county, Michigan: Angeline She-yah-she, housekeeper; her children, See-be-qua and O-be-much.

The following reside at Batchelor, Mason county, Michigan: Charles E. Hickey, laborer, and his wife, Sophia; their child, Chesee-beyh. Andrew Light, laborer.

The following reside at Fountain, Mason county, Michigan: William Green, laborer, and his wife, Wah-be-no-qua; his grandchildren, members of his family, Joseph La-ge-mah, and Ke-wa-ge-she-go-qua, and Ah-ge-she-yah. Sah-guch, laborer. Shah-bee-koaha-mo-qua, laborer. Sam Eden, laborer. Pah-she-ta-bun, laborer. Nah-sa-o-bee, laborer. David Elliott, laborer. Sam Pay-ko-tush, laborer. Peter Anderson, laborer; his child, Mary Anderson.

The following reside in Eaton, Mason county, Michigan: Margaret Ke-wa-koum, housekeeper. Louis George, laborer. Sah-ge-mauh, laborer. Foster Crampton, laborer. Ida Crampton, James Crampton, Ah-she-nick Crampton, all laborers. Shah-bee-dich John, laborer, and wife, Sophia; his children, O-mah-bees John, Steven John, Charles John, and Alex John. Ke-me-oum, laborer. Ah-be-tah-ne, laborer; her children, Ah-gah-ba-ge-she-go-qua, Wa-me-quah-see, and Pay-sha-bun. Nah-o-ba-ge-zick, laborer, and his wife, Ke-ge-do-qua. Baley, laborer, and his wife, Pa-mahse-ga-qua; their children, Emma and Mary. Mary, laborer; her children, Martha Ann and Pay-she-go-me-qush. Saw-zuah, housekeeper.

The following reside in Elbridge, Oceana county, Michigan: Lewis Sha-go-na-bee, laborer, and his wife, Taness-Sha-go-na-bee; their child, Elizabeth. Po-mah-soum O-zah-gee, laborer. John Sha-go-no-zee, laborer. Willie Sha-go-na-bee, laborer, and his wife, Wa-be-qua; his children, Qua-mah-gum-a, Ah-bee-much, Ah-she-nick, So-zath, Ke-ma-koum, and Sah-gah-se-gay. Pa-bah-mah-shee, laborer, and his wife, Wa-je-tooh; his children, Nah-we-go-she-go-qua, O-me-squah-no-ameet.

The following resides in Allegan county, Michigan: Ah-che-mah, laborer.

The following reside in Free Soil, Mason county, Michigan: William Pay-ko-tush, laborer; his children, Keiis Pay-ko-tush and Ah-she-dah-nah-quth.

The following reside at Arcadia, Manistee county, Michigan: John, laborer, and his wife, Pe-tah-koah-mo-qua; their new-born child, unnamed.

The following reside in Custer, Mason county, Michigan: George Peter, laborer, and his wife, Kah-bay-she-kah-mo; their child, Mah-o-ge-gick. Ne gas-keway-koum, laborer, and his wife, Ah-gah-nah-was; their children, James and Mary. Ke-wa-ge-woin, laborer, and his wife, Ke-ne-que; their grandchild, Mary Ann.

The following reside in Eaton, Mason county, Michigan: Anna Ke-wa-koum, housekeeper; her child, Margaret. No-zeen Ke-ma-koum, laborer. Mary Ke-wa-koum, laborer.

The following reside in Fountain, Mason county, Michigan: Menah-che-qua, housekeeper; her children, Wa-sah-wah-go-nah and

Po-ke-ne-yah-shee and Mam-we-shah-mah. George Shah-wah-nah-see-gay, laborer. Num-bee-she-qua, orphan child. John Wesley, laborer, and his wife, Pa-she-ne-nee-qua; his children, Pen-see-me-ge-zick and Wah-she-me-gay-qua.

21 The following reside in Custer, Mason county, Michigan Mag-dwa-be-goo, laborer, and his wife, Mary; their children, Moses, Isaac, and Peter.

The following reside in Branch, Mason county, Michigan: William Rosette, laborer, and his wife, Elizabeth; their child, Mary Ann.

The following reside- in Ottawa county: Kah-ba-she-kah-mo-qua or White face, housekeeper.

The following reside at Reed City, Oceana county, Michigan: Thomas Peter, laborer, and his wife, Ke-ge-do-qua; their child, unnamed. Pen-na-nee-mah-gee, laborer.

The following reside in Hamilton, Allegan county, Michigan: Betsy Walker, housekeeper; her children, Caroline, Soloman, Mary, George, Eliza, Nancy, Jacob, Elizabeth, William, Hiram, and Jenny, all members of her family.

The following reside at Star City, Missaukee county, Michigan: John Green, laborer, and his wife, Mary; their children, Ke-wee-sa and Paul.

The following reside at Bass River, Ottawa county, Michigan: Ke-tua-qua Johnson, housekeeper; her son James, member of her family. Sophia Sho-go-na-be, housekeeper; her children, Alexander, Johnnie, William, Louey, Sidney, and Ke-ne-o-na-qua. Margaret Me-da-wis, housekeeper; her children, Samson, Me-ness, Johnson, and Mary. Jerry Johnson, laborer, and his wife, Kah-be-ke-keen.

The following live on Walpole Island: Pa-mah-seka, farmer; Mas-saw-ke, his wife, housekeeper; their children, Nellie, Amelia, Mabel, and Isaac. Mary Pe-way, housekeeper. A-qu-ash, farmer; Ma-do-mo, farmer, and his wife; their children, Ka-be-nah, Shah-wa-ne-bena-sequa, and Kah-bash-po-no. Alice Thomas, housekeeper; her child, Lida Thomas. Ke-she-ko-qua, housekeeper; her children, Na-ba-na-yash, Mong-o-dos, and Ke-wa-de-noqua. Mary Peters and Rachel Peters. Ah-eah-ne-qua, daughter of Joseph Mandoka and his wife Pa-ton-oqua. Mary Cob-mo-sa, sister of James David, housekeeper. Nah-do, farmer. Saw-ke-che-wa-qua, farmer, his wife; their children, Mah-yah-wa-no-nash-ka-h-shig, and Watson Nah-hah-do. Pa-tur-ke-shing, farmer. Wah-be-me-ne-do, farmer. Ash-tuh-na-quot, farmer. Qua-waih, farmer, and his wife; their

22 child, Ma-za-na-que-naba. Shah-vwah-seka, farmer, and his sisters and housekeepers, Shah-wah-nah-sin and Naw-ga. Ke-ne-we-keshig, farmer, and his wife, Ah-ba-tur-kesh-ko-qua; their child, Tab-wa-yah-ze-no-qua. Wah-sa-yah-ne-quot, cripple; depends on relatives. Wah-sa-yah-be-no-qua, housekeeper. Ka-she-no-qua, housekeeper. Sha-now, housekeeper. Na-kesh-go-qua, housekeeper. Ash-qua-kesh-ko-qua, housekeeper. Ke-wa-do-n-qua, housekeeper. Arthur Bightman, farmer. Pah-tur-sung, farmer, and his wife, Shah-quah-nosh-qua. Mah-you-ze, housekeeper.

The following reside at Hamilton, Allegan county, Michigan: Sarah David, wife of Robert David, housekeeper; John Walker, preacher.

The following lives at Athens, Michigan: Thomas Izaac, farmer.

The following reside at Elbridge, Oceana county, Michigan: Chingwan, farmer, and his wife, Ne-gwash. George Chin-gwan, laborer, and his wife, Ah-ge-th-kh-no-go-qua; their children, See-bee-qua and May-swa-ewe-ne-nee; Nah-bah-gah-we-num, housekeeper; her children, Pe-dah-see-gay, O-dah-shah-wah, Wa-dah-ban-no-qua, Ke-wa-gawh, Eliza, Pah-tah-sunges-shah-ko-way, Nah-bah-na-gesick. Sha-go-na-bee, laborer, and his wife, Dah-owah-qua. Ah-sae-ko-bah-gah, Mah-bee, housekeeper; her children, Mary and Joseph. Saha-be-ko-yah, housekeeper.

The following are residents of Custer, Mason county, Michigan: Amos Ah-bah-nah-bee, laborer; his child, Ka-glo-seh, his sister, member of his family; his housekeeper, O-sah-wah-bum. Joseph Do-ue-bay, farmer. Ke-wa-de-de-no-qua, farmer. George Clucky, farmer, and his wife, Ke-she-go-qua. William Con, farmer, and his wife, Betsey.

The following reside at Shelby, Oceana county, Michigan: Ke-she-ke-wah-bick, laborer; Pena-see-we-gah-she-qua, his wife. Ma-kah-day-we-see-qua, housekeeper; her children, Billy, Jack, and Che-go-che-wah. Joseph Fox, laborer. Re-nah-see-wah-nah-quwth, and Ke-wah-sum.

The following reside at Tallman, Mason county, Michigan: Me-day-wis, laborer; and his wife, Din-no-qua; their child, Pah-shah-dun.

The following reside at Eden, Mason county, Michigan:
23 Charles Me-dah-koo, farmer. Charles Mah-kah-da-wah-quwt, laborer, and his wife, Ah-wah-nah-qua. Ah-shah-wah William, housekeeper; her children, Julia and O-me-sah-wah-quott.

The following reside at Star City, Missaukee county, Michigan: Sho-bah-pash-me-nee, laborer. Martha Chingwash, housekeeper. We soo-chingzwash, laborer.

The following reside at Arcadia, Manistee county, Michigan: Pah-me-ge-she go-qua, housekeeper. Ka-ba-o-say-nah-me-gah-sum, laborer. John Nah-ne-ga-sum, laborer.

The following resides at Crystall Valley, Oceana county, Michigan: Mary Seymour, housekeeper.

The following reside at Ada, Kent county, Michigan: Ida Solomon, housekeeper; her grandchildren, members of her family, James Lewis, Adam Fox. General Solomon and his wife, Anna Solomon, housekeeper.

The following reside at Athens, Calhoun county, Mich.: Phineas Pam-to-pee, farmer, and Mary, his wife; their children and members of their family, Frank, Jacob, George, and Stephen; John Pam-to-pee, Senior, farmer, and Mary, his wife; their children and members of their family, Samuel and Warren. Henry Pam-to-pee, laborer; George Pam-to-pee, laborer. John Pam-to-pee, Junior, laborer, and Jane, his wife; his daughter and members of their family, Kes-he-sah-et-noque and Mary. John Shaw-go-quet, laborer. Augustus

Shaw-go-quet, laborer. Charlotte Shaw-go-quet, housekeeper. Samuel Shaw-go-quet, laborer, and Jennie, his wife; his child, Wah-wah-sang. Mackey Shaw-go-quet, farmer; his son, Thomas, and grandchild, Anna Pokagon. Memee Shaw-go-quet, farmer; his wife, Elizabeth; their children, Martha and Edward. Jo Memee, laborer. Joseph Mandocashawgoquet, Junior, laborer; his wife, Peton-ho-qua; his children, John and Joseph. Way-nee-wah, farmer; Josephine, his wife; their children, John, Peter, William, and Phebe. E-doo-gee-zhich, farmer; Nancy, his wife, and his grandson, Isaac, a member of his family. Naw-naw-que-be, laborer; his wife, Maw-go-quaah; their children, Elizabeth and Jeff. Jacob Somdah, laborer. Lucy Somdah, domestic. Thomas We-zoo, laborer, and his wife, Rosa; their children, Addie, Eunice,
24 Mary, Agnes, and Nancy. Mary Ann Wee-zoo, housekeeper; her children, Frederick, Martha, and Frances. Mary Tisquah, housekeeper. Henry Ke-tosh, laborer. Samuel Ke-tosh, laborer. Caroline Ke-tosh, in the State public school at Coldwater. James Washington, at State public school, Coldwater. Amoa Weston, laborer; his wife, Elizabeth; their children, Mary, Nancy, Sarah, and Agnes Watson, and Betsey, her child.

The following-named persons live in Wayland, Allegan county, Mich.: Sarah Isaac, housekeeper; her children, Nancy, Ke-she-go-que. Eliza Brich, housekeeper; her boy, Henry. Ah-me-kose, farmer, and his wife, Ko-so-mqua; his children, Ida and Emma. White Pegeon, farmer; Julia, his wife; his son, John Pegeon. James Pegeon, laborer; his wife, Martha; his child, Elliott.

The following are Mickasawbes, and live on Walpole island: John Chawme, farmer; Nancy, his wife; their children, Lucy and Eliza Ann. Daniel Chawme, farmer. James Chawme, farmer; Nancy, his wife. Pey-adah-bon, housekeeper; her children, Talfred, Elijah, Eddy-lorinda, Sarah Jane, and Elizabeth. Josiah, farmer; Sarah, his wife; their children, Ella, Wah-bash, and Kewa-je-won. Mee-gse-qua, housekeeper. Pah-sek-emo-qua, housekeeper. Tag-wah-je-won, housekeeper. Wa-be-sa-shk-ung, farmer; his wife, Shaw-ene-gee-sgo-qua; his children, John, Ellen, Mary, and Esther. Yah-bedah, laborer. Joseph Qua-go-she-mah, farmer; his wife, Kahyon. Che-bey-ah, farmer; his wife, Won-qua; their children, Mary, Jane, Annanias, and Eli. Shaw-e-moon-ce, farmer; his wife Tan-o-qua; their children, Joseph, Susan, Allan, and Matthew. Elijah, farmer; his wife, Nancy. Me-ko-med-a-qua, housekeeper; her children, Charlie and Pe-wa-moo. James Ph-th-ung, farmer. Ka-gwa-dah, farmer.

The following resides at Star City, Missaukee county, Michigan: Daniel Hickey, laborer.

The following resides in Otsego county, Michigan: Mah-chic-o-cwee or A. C. Shaw, laborer.

The following reside- at Athens, Calhoun county, Michigan: Rodney Pam-to-pee, laborer.

The following reside in Missaukee county, Michigan:
25 James Soon-dak, laborer, and his wife, Mary; their children, Martmenn and Kah-cah. Camburn Soon-dak, farmer, and his

wife, Winqua; Peter, Ah-me-quet-que, Pa-pah-me, grandchildren and members of his family. Levi Soon-dak, farmer; his wife, Nancy.

The following persons reside at Brady, Allegan county, Michigan: Sarah J. David, housekeeper. Susan D. Macketay, housekeeper; her child, Albert S. Macketay. Robert David, laborer; Emma and Phœbe, his children.

The following reside at Northport, Leelenaw county, Michigan: Joseph Paw-me-ze-yhik, and his wife, O-sah-wah-qum-moo; their children, Baker, Angeline, and Mah-ne-yann. Peter She-she-bam-say; his wife, Nah-me-ne-qua; their daughter, Lizzett. Peter Shaw-shaw-guay, laborer, and his wife, Margrett; their children, Me-sa-ge-zhik and Amos. Joseph Misko-be-no-say, laborer, and his wife, Martha; their daughter, Alice. Mary, widow; her children, Thomas, Sarah, and David. James Ko-kosh (alias Hog), his wife, Helen; their child, David. Mick-se-qua, widow. Shaw-noot; her children, Saina, Mah-ne-yon, and Sailas, John, Robert, and Benjamin. A. M. Steel, alias Oge-mah-ze-ke boo; his wife, Jane; their children, Lazarus and William. Wa-ge-she-go-ma O-ge-maw-geke-to, and his wife, Fliza; their children, Isiah and George. Me-go-ne-qua, widow; her daughters, Nancy and Mary. Lucy Naus-kah; her son, William. John Red-bird, and his wife, Anna; their children, Charlie, Wallace, and Annie. Tah-nais, widow; her daughter, Nancy. Tah-nias, widow; children, Albert and Paul. Shaw-Be-ko-awh, widow; her child, Chrictine. John Shaw-wa-ho-skurm. Joseph Paw-saw-gwa, his wife, Sarah; their children, Mary, Alice, Jackson, Wallace, Solon, Delia, and child not named. John M. Mon-e-do-gaw-bo-way, and his wife, Mary Ann; their children, Moses, Elizabeth, E-gaw-doo, and Antoine. Tah-nais, widow; her son, Sarn. Mary, widow; her children, Simon, James, Michael, Julia, and Agnes. Joseph Wah-si-ge-zhik, his wife, Ke-she-go-qua; their children, George, Joseph, and Mary Ann. Francis Win-de-go-wish, and his wife, Sophia; their children, William, Dominick. Kay-she-yah-sung, and his wife, Sarah. Nah-we-ke-she-gum-e-qua.

26 Joseph Pricket, and his wife, Me-shaw-quot-o-qua; their child, Kay-she-yaw-se-gay. Awh-won-o-quott; his wife, Angel-liqua; their children, Tay-yo-guas-sung, Man-na-sah, and Basile.

The following reside at Bass River, Ottawa county, Mich.: William Sho-go-no-by, laborer. Eliza Johnson, housekeeper. Samuel Mack-aw-tay, laborer. Simon Rid-bird, laborer. Adam David, laborer. John Paul and his wife, Mary; their children, Johnnie Lorie, Tah-we-se-qua, and James. Kelsey Isaac; his wife, Elizabeth; their children, Hattie, Jane, and Pame-sai-quote. Blanche S. Mack-aw-tay, grandchild of James Davis. Peter Me-baw-is, laborer. Jacob Shaw and his wife, Mary; their children, Julia, Samuel, Adam, and Elizabeth. Daniel Samuel, laborer. Joseph D. Samuel and wife, Lucy. James Half-day and his wife, Agnes. Kate W. Sha-go-na-by and mother, and Nancy, all members of one family. Pe-tah-som, widow. William Half-day, laborer; Nancy Half-day, widow; her children, Daniel and George. William Hinman and wife,

Margaret; their children Andrew and Martha. Josie Sha-go-na-by. Martha Wallace Hinman.

The following reside at Sutton's Bay, Leelenaw county, Mich.: Annie, widow; her children, Levi, Wallace, Lucy, and Nah o-ge-as. Mary, widow; her children, Joseph, Mitchel, Charles, Martha, and Pe-nah-se-way. Simon P. Ance and wife, Angeline; their children, Awh-ne-niece, William, and Moses. Mary Ann P. Ance; her children, Alexander, Margaret, James, and Louis. Madeline, housekeeper; her children, John, Susette, Angelique, and Ke-ne-we-ge-zhik. John Po-dah-awh-nish and his wife, Catherine; their children, Mitchel, Enos, Isaac, Benidicter, and Madeline. Ke-she-ge-wah, farmer. Charles Wah-say-ge-zhik and his wife, O-won-nie-qua; their children, Joseph and Mary. O mis-quah-wauh, laborer. Mo-ge-she-go-qua; his son John. John Waub-nim-kee and his wife Angelique; their children, Peter, Simon, and Christine. Frederick Nay o-dah-ge-zhik and wife, Margaret; their children, Louis and Frances Pe-nah-se-way. Mary Ann Wah-zhaw. Mitchel An-nie-wish-kay; his wife, Me-shig-ne-qua; niece and nephew, Pe-naw-se-way and Katherine.

Peter Paul and wife, Elizabeth. Joseph Ain-ne-wish-kay and
27 his wife, Eliza; their children, William, Joseph, Emma, Louis, George, Maw-ji-be-nai-se-wish. Louis Nah-ne-bah-wie and his wife, Mary Ann. Eliza Nah-ne-bah-wie. Joseph Waub-nim-me-kee; his wife, Mary; their children, Sarahpine, Christine. O-ge-maw-bin-na-say and his wife, Pa-dwa-way; their children, Ne-bin-na-yaum-o-quot, Annette, Peter, and Mary Ann. Lucy Pan-e-ge-zhik, laborer; children, Agatha and Josephine. Angeline Pan-e-ge-zhik; children, Angelique, Charley, Enos, Lucy, Mary, Margaret, and Charlotte. Mary Ann Aish-qua-gaw-bah-wie, housekeeper. Peter Shaw-won-waun-gay; his wife, Madeline; their children, Mitchel, George, and Charlotte. Anthony Ance, laborer.

The following reside at Leland, Mich.: Joseph Mon-ne-to-way, laborer, and his wife, Pe-na-se-we-wah; their children, James Ah-she-nick, Wah-o-dah-bun, and Ching-gwa-wa-ko-urn.

The following reside at Solon, Leelenaw county, Mich.: John J. Monetoway and his wife, O-be-maw-bun-no-qua; their children, Mary and Anna.

The following reside at Athens, Calhoun county, Mich.: Isaac Keikeeck, laborer. Edward Keikeeck, laborer.

The following reside at Gill's Pier, Leelenaw Co., Mich.: Dominick Win-de-do-wish and his wife, Ah-wah-gains; their children, Sophia and Joseph.

The following reside in Eaton, Mason county, Michigan: Louis Me-dawis, laborer. Pay-shaw-bun and grand-daughter, Ke-she-go-qua. Nah-o-do-ge-zhik, Maw-by's child, born since father registered.

The following reside at Custer, Mason county, Michigan: Children of William and Betsy Con, whose names are on contract, but children omitted; Nah-o-quas, Ke-she-goo, Pa-me-bah-to-qua, Anna, and Wah-yah-yah-che-wah-no-qua. James Judson, laborer, and wife, Kah-bo-yah. John Nah-gon-quah-ong, laborer. William Mick-koo, laborer; his son, James. Taw-she-wah Hickey, widow; her grandchild, Eddie. Pe-dah-bun Hickey.

The following reside at Cross Village: E-dah-we-go-na-bee, husband of Mon-go-qua. (These are the oldest Indians living, and are cared for by their grandchildren.) Mon-go-qua was at the treaty of Chicago, on Sept 27, 1833.

28 The following reside at Leland, Leelenaw county, Mich.: Mary (Awh-ne-go-wau's daughter), her children, Ke-we-do-wah-bee, and three of the children's names not known.

The following reside at Payshawbytown, in Leelenaw Co., Michigan: John B. Way-say-ge-zhik, and his wife, Way-win-daw-bun; their child, Nah-maw-niece. Ne-gawn-be-quay, laborer. Francis Nay-ne-yas-shay, laborer; his children, Ma-she-kay, Waub-nim-kee, Mary Ann, Satarn, Mis-sa-she-ge-go-qua, housekeeper. Wain-ne-she-sish-quat; her grandchild, Ambrose. William Mick-saw-bay, and his wife, Angelique; their children, Charley, Francis, George, and Ke-way-ge-she-go-qua. Peter Pam-me-go-shik, and his wife, Aun-ne-quot-o-qua. Way-bo-way-shkung, and his wife, May-yah-wah-ge-wa-qua; their children, Benjamin, Peter, Mitchel, Angelique, Anguttoo, and Mary. Angelique Ke-she-go-qua, housekeeper, widow. Antone Nah-gaun-nesay, and his wife, Angelique; their children, No-din-na-quah-urn, Senwick, Mis-quan-quot-o-quay, Jacob, Mary, and Wah-sa-ge-shik. Louis Ance, and his wife, Margaret; their children, Julius, Elizabeth, Augusta, Catharine, and Mushine. John Shaw-won-naun-gay, and his wife, O-gaw-be-o-say-quay; their child, George. May-dwa-sug-gie-num, laborer. Margaret M. Kah-gaw-ge-she, housekeeper. Tunnais M. Bird, housekeeper; her children, Anna and Joseph. O-bah-she-me-gay-qua, housekeeper. Me-she-wah-qua, housekeeper. Nah-awh-bun-no-qua, housekeeper. Peter Ance, laborer. Gabriel Pay-shay-bay, and his wife, Sophie; their children, Mary, Anna, Katie, Margaret, Agatha, and Benjamin, and Antoine, and Francis.

The following reside at Elbridge, Oceana Co., Michigan: Paw-gouch-ge-qua, housekeeper; her children, Pay-bah-mah-shay and Kay-ba-o-say-dung. Qua-gua-she-mie, and his wife, Nancy; their children, Saw-ge-jie-way, Pay-paw-mee, and She-paw-ji-won-o-qua. Alexander O-sh-kin-naw-way, laborer. Na-tum-ege-she-go-qua. Kah-ge-be-go-qua.

The following live at Payshawbytown, Leelenaw Co., Michigan: Mary Borransaw; her daughter, Mary. Angeline Blackman, housekeeper. Francis Blackman; his niece, Agatha. Paul Blackman, and wife, Agatha; their children, Mitchel, Sampson,

29 Joseph, and Thomas. Isaac Blackman, laborer; his children Josephine, Mitchel, Johnnie, Sophia, and Edward, Jacob. Pay-bah-saw, and his wife, Mo-way-quay; their grandchildren, O-gaw-ga-ge-zhik; the other babe name unknown.

The following lives at Gellispie, Michigan: Shay-qua-ke-shing, laborer.

The following resides at Tallman, Mason county, Michigan: Louis Bigbone, laborer.

The following reside in Charlevoix county, Michigan: John Negah-ne-ge-zhik, and his wife, Kah-we-tauch; their child, Sah-benne-gah-ne-gzhik. Grandchildren of Wah-ni-be-sis, Mary, Joseph,

Mary Ann, Jane, Daniel, Charles, Solomon, Peter, Anna, William, and Eliza Tah-ba-sauch, farmers, laborers, and housekeepers. Jane Pe-na-si-wah-bun-o-qua, housekeeper; her children, Sarah Ne-gaw-ne-sa, Mary Ann, Ne-gah-ne-sa, John, Peter, and Eliza Ne-gaw-ne-sa. Peter Chin-guah, and his wife Rosine; their children, Louisa, Charles, Susan Chin-guah. Tunnais Nah-ka-o-say, laborer. Noah Wain-dah-sum-o-say, laborer; children, Joseph, Samuel, Sarah, and Martha Wain-dah-sum-o-say. O-daw-nah-a-she, laborer; his children, Joseph, Ada, and Madaline O-daw-nah-a-she. Peter Ta-bah-ke-yah, laborer, Mary, his wife; their children, Thomas, Isaiah, Tunnais, Lesan, and Anglo Ta-bah-ke-yah. Angelic Nah-ka-o-sa and her son Henry. Abraham Chin-quah; his children, Lazarus, Rollin, Nancy, Isabella, Levi, Ben, Jane, Mary, and Agnes Chin-quah. Enos Ta-bah-ke-yah, and his wife, Margrett; their sons, Samuel and John. Jonah Miss-ko-pe-na-see, and his wife, Jane. Simon O-shaw-wah-sko-pe-na-see, laborer; his children, Charles and James.

The following resides at Omena, Leelanaw county, Michigan: Sophia Nah-o-qua-ie.

The following resides at Free Soil, Mason county, Michigan: John Collins, and his wife, O-be-dah; their children, Aish-ke-bug-gie; the child's name unknown.

The following reside in Leelanaw county, Michigan: Josie Miss-qua-pe-na-see, and his son Thomas and his brother William, grandchildren of Mis-qua-benose. John Wa-ka-soo, and his wife, Se-gie-we-qua; their children, Susan, Amos, Moses J., Rosie, and Joseph, grandchildren of Mis-qua-be-nose. Wash-ko-bah-ah-mick, laborer; his children Mary Ann, Lizzett, and Sopia Ah-mick. Frances O-gie-ji-won-noe, and his wife, Angelique. Agie-ji-won-noe, whose father drew annuities with Pottawatomies. Moses P. Ma-ka-soo, and his wife, Lizzie A. Wa-ka-soo; his brother and sisters, Joseph P., Amos J., Edmund, and Sophia J. Ma-ka-soo. Enos Petoskey; his wife, Mary; their son, Huron E.

The following resides at Petoskey, Emmett county, Michigan: James Petoskey, laborer; children, Pearly M., Kingsley J., and Basile Petoskey.

The following reside in Leelanaw county, Michigan: Sophia Ne-gaus, housekeeper. Mary Peterson, housekeeper; her daughter, Ella Jane Petoskey. Tunnais E. Dah-we-cum-e-go, her son. Louis Petoskey; children, Henry, Willie C., and Hattie. Peter Shaw-won-da-see and his wife, Mida-quay; children, Louise, Marion, and James, relatives of old Shaw-won-da-see. Lewis Shaw-won-da-see and his wife, Sarah; children, Jonah, Sampson. Daniel Wah-saquahurn and his wife, Martha; their children, Silias and John. Margrett Kitche-o-kon, housekeeper; children, Joseph, Nahkampe, Kit-che-o-kon.

The following reside at Charlevoix, Charlevoix county, Michigan: William Kitche-o-kon, John and Owen Kitche-o-kon.

The following reside at Burgess, Charlevoix county, Michigan: Peter Kitche-o-kon and his wife, Tunnais; their children, Josie, Elosie, and Solomon. Daniel Kitche-o-kon, Edmund and Joseph

Kitche-o-kon. O-na-yah-bon, laborer. Thomas Chi-gwa-mi-gah-o-go, and his wife, Ke-sagw-iawe; their children, Sarah and Anna. Nah-mi-ne-qua, Maw-kah-da-o-quot; child, Susan. Antoine Nay-se-gah, John Nay-se-gah.

The following reside in Manistee county, Michigan: Mary Ann Kitche-pa-gou; her daughter, Pe-de-quah-awh, her sister.

The following resides at Charlevoix, Michigan: Joseph Man-kah-ta-bin, laborer.

The following resides at South Bend, Indiana; Angeline Ne-shib-she-won-noe, housekeeper.

31 The following reside at Vandecar, Isabella county, Michigan: Moses Ash-quaib, laborer; children, Julia, Charles, and Wah-say-yah.

The following reside at Hartford, Michigan: Joseph Moso, laborer; his wife, Martha; children, Daniel, Mary, Tunnais, Nancy, and Ida. J. W. Lewis and wife, Mary.

The following reside in Le Roy, Osceola county, Michigan: Louis Robinson, and his wife, Mary; their children, Charles, Willie, and Thomas.

The following resides at Fontain, Mason county, Mich.: Sampson Robinson.

The following reside at Eaton, Mason county, Mich.: Wah-saw-ji-won-o-qua, widow; her children, Shaw-won-a-say and Wah-be-na-say. Pay-qua-naish-kung, and his wife, Mahoe. Edward E-daw-we-cum-e-goes, laborer, and wife, Kah-ga-yah; their children, Thomas and Mary. Ki-me-won, Nah-ke-we-say, child, Kaw-gaib-be-go-qua.

The following reside at Grand Haven, Mich.: Joseph Rosette, laborer. Charles Rosette, laborer. Emma Fox, housekeeper; her grand-daughter, Wah-be-sha-she-qua.

The following reside in Mason county, Mich.: Nah-she-wa-qua; her children, Tunnais, Madeline, Aw-sha-ne-qua, Aw-to-ne-awh, Moses, Maw-ne, and Rosine.

The following reside in Leelanaw county, Mich.: Mitchell Ance, and his wife, Mary Ann; their children, Lossie, Louise, Clara, Thomas, Anthony, John, and Sampson.

The following reside at Middle Village, Emmett county, Mich.: Catherine O-ge-no-ti-go, widow; her sons, Leon and Joseph.

The following — at Petoskey, Emmett county, Mich.: Jane Shai-we-bah-go-qua, widow; her children, Agnes, Mary, Jacob, and Jimmie.

The following reside at Burgess, Charlevoix county: Maria Walker, widow; her children, Peter, Jackson, Agnes, and Charlotte. Mary Robinson, wife of Johnny Robinson; her child.

The following reside at Sutton's Bay, Leelanaw Co., Mich.: William John, laborer, and his wife; their children, Elizabeth and one name unknown.

32 The following reside at Hamilton, Allegan Co., Mich.: Alexander Moso, laborer. Peter Moso. Shay-go-na-bee Moso, laborer. Mary Elizabeth Moso, housekeeper; her child, Martha. Darseen Moso. Ne-sate, laborer; children, Julia, Mary, and Thomas. Shaw-noote, laborer; children, Mary and Elizabeth. William Kah-we-tah-cum-mik, laborer, and his wife, Mah-ji-wah; their children,

See-done, John, Me-sha-ne, and Angelique. Mary Ann Moso, housekeeper. Peter Kah-we-tah-cum-mik, laborer. Mo-ke-ji-won and wife, Ne-be-no-qua. Mary June, housekeeper, and brother Lowe. Sarah David, housekeeper; her child, Mary. William Batice Sawock, laborer, and wife, Eliza; their children, Mary and John. James Sah-ge-mah, laborer, and his wife, Nancy; their child, Angeline. Solomon Gulpin, laborer, and his wife, Mary; their children, Baish-hum-mo and O-ge-maw. Peter Muck-ah-da-o-quot, laborer. Solomon Walker, laborer, and his wife, Mary Ann. Joshua Joseph Bushes. Mary Ka-Kack, housekeeper; children, Bertha and Andrew. Peter Ka-we-win, laborer, and his wife, Me-shib-be-ginnum. Moses Foster, laborer.

The following reside at Bradley, Allegan county, Michigan: Pay-she-ge-she-go-qua Sprague, laborer; grandchild, Selkrig. John Mack-gay, laborer, and wife, Ke-we-ji-wa-qua; child, James. Lydia Me-da-wis, housekeeper; her children, Nancy, Sarah, Mary Ann, and Wah-oo. Alice Sprague, housekeeper; James and Wah-wah-ya-kaw-mig, children. David Fox; his child, Pa-she-ge-she-go-qua.

The following reside at Elgin, Ottawa county: Lincoln P. Foster, laborer. Charles W. Foster, laborer. D. K. Foster, laborer, and his wife, Ellen; their children, James, Lucy, Hinman, and Nancy T.

The following reside at Harbor Springs, Emmett county, Michigan: Mary Ann Meeg-se-mong, housekeeper; her son, Paul. Elizabeth Ke-wis-swa-bay and William Ke-wis-swa-bay; their children, Paul, Theressa, and George. Joseph Mix-se-mong, laborer, and wife, Christine; their children, Casper, John B., Clara, Sophia, Paul, and Jerome. Jane O-mah-me-goos, housekeeper. Daniel Ne-saw-a-quot and his wife, Paclonen; daughter, Lucy.

The following resides at Grand Rapids, Kent county, Michigan: Harriet E. Robinson.

The following resides at Lake View, Montcalm county, Michigan: John R. Robinson and wife, Jennie.

33 The following reside at Star City, Missaukee county, Michigan: Sha-yah-shay, Shaw-won-ne-ge-zhik, laborer. John Wah-o-gon, laborer. Mary Rapp, housekeeper; children, Maggie, Elizabeth, Julia, and Susan. Francis Ash-ke-bee and wife, Tah-be-dah; son Batice.

The following reside at Hartford, Mich.: Betsy Pe-ya-she-way, housekeeper. Angeline Lewis, housekeeper. Elizabeth Mix, housekeeper.

The following reside at Grayling, Mich.: Martha, wife of A. C. Shaw, and grandchildren, O-ge-maw-bin-na-see, Naw-o-goun-na-be, and Johnson.

The following reside at Pine Lake, Charlevoix, Mich.: Louis Ke-sha-pin-na, laborer. Paul Patah-wah, laborer. Ah-be-dah-kah-mi-go-qua, Mary Paboo, John Mitchell. Basile Wah-be-nim-kee, laborer. Josie O-she-bah-kum, housekeeper. Louis O-gie-ji-won-noo, laborer. Thomas Nah-quah-um, laborer. Mary Ann Smith, housekeeper. Jane Aiken, housekeeper. Louis John, laborer.

The following reside in Leelanaw county, Michigan: John Wa-wa-see-mak, farmer; his wife, Ke-ne-mah; their children, Pa-me-note, Wa-wa-see-mah, Mary and Ansel. P. Ga-ga-gishi, farmer, and his wife, N. Ga-ga-gishi; their children, Michael, Peter, Ganistin, Ka-ta-ne, Ah-ga-nas, and Joseph. Abbie Ance, laborer. Leon Francis, farmer. Moses Francis, Sr., farmer, and his wife, Mary Francis; their children, Charles, Moses, Jr., and Mamie. La-me-penash, farmer. Ah-to-ne-ala Pe-nash. Ah-di-ni-gs Na-me-se, laborer. Mary Ne-penah. L. Ne-penah. Peter Nee-she-me-mah-nah-gooth, laborer; Canote, Mary, and Amy. O-dash-goo-yah-ben Ke-ta-ga, laborer. Wa-sen-o-gee Mah-ge-ge-tooh, laborer. Lewis Ke-sha-pin and his wife, Susan Ke-sha-bin. David A-go-sa, farmer, and his wife, Mary D.; their children, Paul, Robert, and Jacob.

The following reside at Petoskey, Michigan: James Petoskey, farmer. Frank Petoskey, the father; Johnny Petoskey, Marion, Paul, and Mitchell Petoskey. William Petoskey and his wife, Jane Petoskey. Ella J. Petoskey, wife of James Petoskey. Thomas Petoskey, farmer. Eddie Petoskey, Dollie and Bertha Petoskey, grandchildren of Lewis Petoskey. Elizabeth J. Petoskey, widow; her children, Sarah J. and Cornelius J. Petoskey.

34 The following reside in Allegan county: Isaac Bennett; his son, Joseph. Mrs. Mary Hall, Sr.; Mrs. Mary Hall, Jr. Joseph Saw-jack, farmer.

The following are on Walpole Island: John Ma-kewenah, laborer; his child, Agnes. Kish-go-qua, housekeeper. Alice Pe-wah-ne-shing, housekeeper. Nah-she-we-shaw, laborer. Adam Shipman, farmer; his wife, Elizabeth, housekeeper; their children, Henderson and Frank.

The following reside at Grand Haven, Michigan: Angeline Ossiginac, housekeeper, and children, Mitchell, Lucy, William, and Frank.

The following on Walpole Island: George Shagonaby, farmer. Emma Shaw-gah-jie-a-qua, housekeeper. James Williams, farmer. Kah-ke-she-wa, housekeeper. Kah-zah-bee, housekeeper. Amos Thomas, farmer.

The following resides at Hamilton, Michigan: Frank Williams.

The following reside at Hartford, Michigan: Joseph Jackson, farmer; his wife, Num-ke-kaw-mo-quey. Charles Sawock, farmer, and Eliza, his wife.

The following reside in the State of Michigan: Ke-ne-she-way and Nancy Ke-ne-she-way, Smith Kin-man, Me-to-go-she-quo, Charles Generean, Mary Wash-sa-quan, Solomon Peter, John Batteas, William Pay-ko-tash, Mah-ne-yah Pay-ko-tash.

The following reside at Sutton Bay, Michigan: Joseph Wa-sa-shik, Ke-she-go-qua, Me-txhal, Sah-qwe-she-no-quay, Joseph Smith.

That by an act approved March 19, 1890, the Congress provided as follows:

An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana.

Whereas representatives of the Pottawatomie Indians of Michigan and Indiana, in behalf of all the Pottawatomie Indians of said States, make claim against the United States on account of various treaty provisions, which it is alleged have not been complied with: Therefore—

Be it enacted by the Senate and House of Representatives
35 of the United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the said Pottawatomie Indians of Michigan and Indiana and to render judgment thereon. Power is hereby granted the said court to review the entire question of difference *de novo*, and it shall not be estopped by the joint resolution of Congress approved twenty-eighth July, eighteen hundred and sixty-six, entitled "Joint resolution for the relief of certain Chippewa, Ottawa, and Pottawatomie Indians" nor by the receipt in full given by said Pottawatomies under the provisions of said resolution, nor shall said receipt be evidence of any fact except of payment of the amount of money mentioned in it; and the Attorney General is hereby directed to appear in behalf of the Government, and if the said court shall decide against the United States the Attorney General may, within thirty days from the rendition of the judgment, appeal the cause to the Supreme Court of the United States, and from any judgment that may be rendered the said Pottawatomie Indians may also appeal to said Supreme Court: Provided that the appeal of said Pottawatomie Indians shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. That said action shall be commenced by a petition stating the facts on which said Pottawatomie Indians claim to recover and the amount of their claims, and said petition may be verified by a member of any "business committee" or authorized attorney of said Indians as to the existence of such facts, and no other statements need be contained in said petition or verification.

Approved March 19, 1890.

That your petitioners are not parties to the suit lately commenced in this court, entitled "The Pottawatomie Indians of Michigan and Indiana *v.* The United States" (No. 16743), and they are not represented therein; that the attorney appearing of record in said cause had and has no authority to act for them in the premises; that the agreement referred to in the jurat to the petition in said suit
36 as the source of his authority shows that August 25, 1887, sixty-one male and thirty female Indians, residing in the counties of Cass, Van Buren, Berrien, and Allegan, Michigan, and St. Joseph, Indiana, signed a paper naming certain persons to act as a business committee for them in employing said attorney, and on the same day they held a meeting and elected one of their number as principal chief, who was to act with said committee in mak-

ing the contract. September 29, 1887, this so-called principal chief and the business committee aforesaid, acting together and under the authority so conferred, made the contract with the attorney referred to. It was acknowledged the same day in Van Buren county, Michigan, and appears to have been approved in the Indian Office on the same day, although it was not acknowledged by parties in Washington until October 11, 1887; but it conferred upon said attorney no authority to act for any Indians other than the 91 mentioned. None of your petitioners were parties to or represented in any part of the transaction. Your petitioners have applied to the attorney in said cause for permission to take part in the suit and amend the petition therein so as to properly present the claim of all the Indians included in the said act of Congress, but said attorney refuses to accede to such request.

Your petitioners further state that the Pottawatomie Indians of Michigan and Indiana included in said act of Congress are the descendants and heirs of Pottawatomies once divided into and belonging to seven bands known as the Hurons, Maug-ach-quas, Mick-a-saw-bes, Match-e-be-nash-she-wish, Nottawasepis, Pokagons, and Prarie-Rondes, the latter being sometimes called Sagamas band, the whole now numbering 1,622 persons, as nearly as can be stated. About the year 1833 the Pottawatomies as a tribe removed west of the Mississippi river, but a number of individual members
37 remained east of Lake Michigan, those remaining east being the Indians designated in the said act of Congress. Those included therein have no tribal organization or chief and do not exist as a tribal body. They do not live in or hold tribal relations with each other. They are citizens of the United States scattered over Michigan from the straits to its southern boundary and about 12 besides living in Indiana, earning their own living in various kinds of pursuits severally the same as white citizens.

Your petitioners embrace all of the Indians mentioned in said act, as far as their names could be ascertained, except not exceeding 250 descended almost entirely from the Pokagon band, 91 of whom are those taking part in the contract aforesaid, but they file this petition on behalf of themselves and all the other Indians included in said act who may choose to come in and share in these proceedings, including the 91 aforesaid.

Your petitioners further state that the treaty stipulations referred to in said act of Congress are those contained in certain treaties made between the United States and said Pottawatomie Indians August 3, 1795, September 30, 1809, October 2, 1818, August 29, 1821, October 16, 1826, September 20, 1828, July 29, 1829, October 20, 1832, October 26, 1832, October 27, 1832, September 26, 1833, including the article supplementary thereto of September 27, 1833, and June 17, 1846.

That the Indians designated in said act of Congress were either ancestrally or directly parties to all of said treaties and entitled to share *per capita* in the annuities secured to the Pottawatomies thereby and to severally participate in the benefits arising therefrom to them. In the earlier treaties they are called Pottawatomies,

later the united nation of Pottawatomies, and in the treaty of 1846 it was agreed they should be thereafter known as the Pottawatomie nation. By these several treaties the United States purchased
38 and the said Indians ceded large tracts of land to the Government, amounting in all to about thirty millions of acres, the bands aforesaid also granting the reservations held by them separately, and in payment the United States, among other things, agreed to pay them certain annuities and also with other lands.

By the treaty of September 26 and 27, 1833, the said united nation ceded to the United States about 5,000,000 of acres of land lying on the western shore of Lake Michigan and 164 sections of land situate in Michigan, the latter being reservations belonging to the several bands hereinbefore named; but, as the main nation were going west of the Mississippi river, it was by article 4 of that portion of the treaty made September 26, 1833, agreed that a just proportion of the annuity money, secured as well by former as that treaty, should be paid west of the Mississippi to such portion of the nation as should remove thither during the next three years, after which the whole should be paid at their location west of said river; and as to those remaining in Michigan September 27, 1833, by articles supplementary to those formulated the day previous, and to which the Michigan Indians had not before assented, it was agreed that the 164 sections of land mentioned, consisting of the Nottawasepi reservation of four miles square; forty-nine sections, on which the villages of To-pe-ne-bee and Pokagon were situate, belonging to the Pokagon band, and ninety-nine sections of land contained in the treaty made September 16, 1827, and which constituted reservations for the other bands hereinbefore named, your petitioners and their ancestors owning the four miles square and 99 sections mentioned, should be, and they were thereby, ceded to the United States. It was also agreed that the Indians designated in the said act of Congress should be considered as parties to the said treaty of the day previous
39 "and be entitled to participate in all the provisions therein contained as a part of the united nation," and to this still another provision was added as follows:

"And as since the signing of the treaty a part of the band residing on the reservation in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties and arising from the sale of the reservation on which they now reside shall be paid to them at L'Arbre Croche."

Said reservation being the 164 sections aforesaid.

It was also agreed that these supplementary articles should be considered in the same light as though inserted in the body of the treaty.

All the conditions imposed upon the Indians remaining in Michigan to entitle them to share in the annuities and other benefits granted and promised by said treaty and the articles supplementary thereto have been complied with.

In and by that part of said treaty formulated September 26, and to which the Michigan Indians became parties September 27, 1833, as aforesaid, the United States, in part and as a further consideration for the cession to the Government of the lands mentioned, granted to the United Nation of Indians (which included the claimants herein) 5,000,000 of acres of land in Iowa, and by a treaty made June 17, 1846, between the United States and the Pottawatomies removing west of the Mississippi, as aforesaid (the claimants herein not being directly represented), the 5,000,000 of acres of land obtained by the treaty of 1833, as stated, was sold and ceded to the Government, the United States expressly promising to pay the Pottawatomie Indians therefor in article 3 thereof, which is as follows:

40 "Article 3. In consideration of the foregoing cessions or sales of land to the United States, it is agreed to pay to said tribes of Indians the sum of $850,000, subject to the conditions, deductions, and liabilities provided for in the subsequent articles of this treaty."

The deductions and liabilities provided for amounted to $207,000, leaving a balance going to the Indians of $643,000, and this balance, by article 7, it was agreed should "remain with the United States in trust for said Indians and an interest of five per cent. annually paid thereon, commencing at the expiration of one year after the removal of said Indians and continuing for thirty years and until the nation shall be reduced below one thousand souls;" but their number was never reduced below said limit and your petitioners show that the "questions of difference" referred to in said act arise out of the proper construction of said treaties touching the annuities the claimants are entitled to, as well as the amount thereof, to whom they should be paid, and their interest and rights in the property secured to the United Nation of Indians by the treaty of September, 1833, and the avails thereof mentioned in the treaty of June, 1846.

And thereupon they state their claims specifically as follows:

First. Your petitioners ask their just proportion of the perpetual annuity of $1,000 promised by the Pottawatomies by subdivision 7 of article 4 of the treaty of August 3, 1795. (7 S. at L., 51.)

Second. Their just proportion of a perpetual annuity of $500 given by article 3 of the treaty of September 30, 1809, to the Pottawatomies. (7 St. at L., 114.)

Third. They also ask their just proportion of a perpetual annuity of $2,500 secured the Pottowatomies by article 3 of the treaty of October 2, 1818. (7 St. at L., 185.)

41 Fourth. The claimants are also entitled to their just proportion of an annuity of $5,000, payable for twenty years, promised the Pottawatomies by article 4 of the treaty dated August 29, 1821. (7 St. at L., 220.)

Fifth. They also claim their just proportion of an annuity of $2,000 for twenty-two years given the Pottawatomies by article 3 of the treaty of October 16, 1826. (7 St. at L., 296.)

Sixth. They also ask their just proportion of a perpetual annuity

of $2,000, granted the Pottawatomies by article 2 of the treaty of September 20, 1828. (7 St. at L., 317.)

Seventh. They also ask their just proportion of an additional annuity of $1,000, secured the Pottawatomies for twenty years by the said article 2 of the treaty of September 20, 1828, aforesaid. (7 St. at L., 317.)

Eighth. They also claim their just proportion of a permanent annuity of $16,000, provided and promised the United Nation of Indians aforesaid by article 2 of the treaty of July 29, 1829. (7 St. at L., 320.)

Ninth. They also ask their just proportion of an annuity of $15,000, payable for twenty years to the Pottawatomies by article 3 of the treaty of October 20, 1832. (7 St. at L., 379.)

Tenth. They also are entitled to their just proportion of an annuity of $20,000 for twenty years, secured the Pottawatomie Indians by article 3 of the treaty of October 26, 1832. (7 St. at L., 395.)

Eleventh. They likewise claim their just proportion of an annuity of $15,000, due said Indians for twelve years under article 4 of the treaty of October 27, 1832. (7 St. at L., 401.)

Twelfth. They claim the whole of an annuity of $2,000 a year for twenty years, made payable to the claimants separately by the said treaty of September 26, 1833, and the articles supplementary thereto of September 27, 1833. (7 St. at L., 442.)

42 Thirteenth. They also claim their just proportion of a perpetual annuity of $300 granted the Pottawatomies by article 10 of the treaty of June 17, 1846. (9 St. at L., 855.)

Fourteenth. That the annuities aforesaid up to and including the year 1890 (excluding the one of $2,000 a year, payable for twenty years to the claimants separately as stated above) aggregate $2,021,200.00; that when the supplementary articles to the treaty of September 26, 1833, were executed, the Indians removing west of the Mississippi numbered 3,840, and those remaining last numbered 1,110, as nearly as your petitioners can ascertain the numbers thereof, and that the just proportion of said annuities payable to the claimants and your petitioners *per capita* on the basis aforesaid under the articles supplementary referred to would be $408.32, and the total amount of said annuities going to all the claimants would be the sum of $453,235.20. To this should be added the annuity of $2,000, payable to the claimants separately by said articles supplementary for the 19 years that the same remained unpaid, making $38,000.00 more. This makes their claim for annuities to date aggregate $491,235.20.

But your petitioners further state that the perpetual annuities provided for and payable by said treaties amount to the sum of $22,300 yearly, and the value of the same at this date is $446,000, whereof the claimants' just proportion on the basis of numbers existing in 1833, as stated *per capita*, is $90.10, and the aggregate amount due them is $100,011.00, making the total claim for past and future annuities together the sum of $591,246.20; that the *per capita* proportion of said amount payable to each Indian severally

as their numbers were in 1833 would be about $532.65, and the aggregate sum going to that portion of the claimants represented by your petitioners, $458,079.00, and in this sum they are en-
43 titled to share severally or *per capita*. No claim is made for annuities payable previous to the year 1836. Your petitioners are informed and believe that from 1843 to 1866, inclusive, in several instalments, the aggregate sum of $75,162.50 was paid by the Government on said annuities to a portion of said Indians, but no part of the same was paid to or received by your petitioners or their ancestors or those whom they represent as aforesaid, unless in 1843 and 1844 a few, and not exceeding 30, of the Nottawasepi band referred to received a portion of the yearly instalments of $1,587.50 then paid by the United States; but this, in the absence of definite information, is not admitted; that, except as aforesaid, the amount above stated is still due and unpaid your petitioners and the claimants herein under the several treaties named. They are unable to state the number of Indians, the several years when annuities were payable, in detail and separately.

Fifteenth. Under the said treaty of September 26 and 27, 1833, the petitioners claim their share in the land ceded by the United States to the said United Nation of Indians, consisting of 5,000,000 of acres situate in Iowa, and in the avails thereof promised and assured by articles 3 and 7 of the treaty of June 17, 1846, aforesaid (9 St. at L., 855); that the interest at five per cent. on the said trust fund of $643,000 thereby created was $32,150, payable annually, beginning in 1849; that the total amount thereof to and including the year 1890 is $1,350,300, and the value of the same as an annuity at this date is $643,000, making an aggregate sum of $1,993,300 for the interest and the value of the annuity together. The share of that sum belonging to the claimants, estimated on the basis of the numbers of Indians west and east of the Mississippi as aforesaid *per capita*, is $402.68, and the total of the portion thereof belonging to the claimants, all together, is $446,974.80. The amount of said fund belonging to your petitioners separately,
44 estimated on the same basis, is $346,304.80, and this sum they claim nothing having been paid thereon.

Sixteenth. No assignment or transfer of said claim or of any part thereof or interest therein has been made to your petitioners' knowledge or belief, and that the claimants are justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets.

Seventeenth. After deducting the payments of $75,162.50 aforesaid there remains due the claimants in all the matters aforesaid $963,058.50, and $804,383.80 of said amount belongs to your petitioners, and they demand judgment for said sum.

JNO. B. SHIPMAN,
Attorney for Petitioners.

Address: Coldwater, Michigan.

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

Before me, the undersigned, appeared John B. Shipman, attorney for the above petitioners, and made oath that he is the authorized attorney of the Indians named as petitioners in the foregoing petition in the matters above mentioned; that he knows the contents of said petition, and that the matters therein stated are true, so far as the same are stated on his knowledge, and as to the matters therein stated on the knowledge, information, or belief of the petitioners he believes them to be true.

Dated Washington, November 5, 1890.

JOHN RANDOLPH,
Ass't Clerk Ct. of Claims.

45 *General Traverse. Filed November* 13, 1890.

And now comes the Attorney General on behalf of the United States, and, answering the petition of the claimant- herein, denies each and every allegation therein contained and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant- have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney General.

46 *Findings of Fact. Filed March* 28, 1892.

Findings of fact.

Claim for unpaid annuities under certain treaties, as hereinafter shown:

I.

In an article supplementary to treaty of 27th September, 1833, it is provided that a part of the band residing on the reservation in the Territory of Michigan, on account of their religious creed, might remove to the northern part of the peninsula of Michigan, and, in case of such removal, the just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservation on which they then resided should be paid to them at L'Arbre Croche. (Vol. VII, U. S. Statutes at Large, pp. 442-'5.)

II.

Some of the Pottawatomie Indians of Michigan and Indiana did remove, in obedience to this article, from their reservation to the northern part of the peninsula of Michigan, but most of them remained in southern Michigan, to which the Government did not object, and dealt with them, not enforcing the requirement of removal as hereinafter shown.

III.

The said Indians have not received since 1835 any payments from the annuity of $1,000 under the 4th article of the treaty of August 3, 1795. (Vol. VII, p. 51, U. S. Stat. L.)

They have not received any payments since 1835 under the 3d article of the treaty of September 30, 1809. (Vol. VII, p. 114, U. S. Stat. L.)

They have not received any payment since 1835 under the 3d article of the treaty dated October 2, 1818. (Vol. VII, p. 185, U. S. Stat. L.)

47 They have not received any payment under the 4th article of the treaty of August 29, 1821 (vol. VII, p. 220, Stat. L.), since the year 1835.

They have not received any payment under the third article of the treaty of October 16, 1826. (Vol. VII, p. 295, U. S. Stat. L.)

They have not received any payments since 1835 under the 2d article of the treaty of September 20, 1828. (Vol. VII, p. 317, U. S. Stat. L.)

IV.

Under the treaty of July 29, 1829 (vol. VII, p. 320, U. S. Stat. L.), the claimants have received payments as hereinafter shown.

V.

The said Indians have not received any payments since 1835 under the 3d article of the treaty of October 20, 1832. (Vol. VII, p. 379.)

They have not received since 1835 any payments under the 3d article of the treaty of 26th of October, 1832. U. S. S. L.

They have not received any payments under the treaty of June 17, 1840. (Vol. VII, S. L., p. 55.)

VI.

The said Indians have received a portion of the sum of $2,000 under the articles supplementary to the treaty of October 26, 1833 (vol. VII, S. L., p. 442), as shown in finding eight.

VII.

Amount Paid Pottawatomie Indians of Michigan and Indiana.

There were paid the said Indians from the year 1843 to 1863, inclusive, 21 years, $1,587.50 per annum	$33,337 50
In 1864	1,237 50
In 1865	1,587 50
In 1866, in accordance with public act	39,000 00
	75,162 50

The payments made between 1843 and 1863 were paid as the said Indians' proportion of the $16,000 annuity accruing under the treaty of July 29, 1829, and $2,000 under the supplemental treaty of September 26, 1833; the $39,000 under the joint resolution of July 28, 1866 (14 Stat. L., p. 270); said payments were made out of the funds of the United States. No funds due the Pottawatomie nation have ever been reserved by the Government for the payment of the Indians of that nation residing in the States of Michigan and Indiana.

48 In making the said payment of $1,587.50 from the year 1843 and the $39,000 the following basis was assumed by the defendants:

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
WASHINGTON, D. C., *May* 4, 1871.

Wm. U. Severance, Esq., 815 9th street, Washington, D. C.

SIR: In reply to your letter of the 28th ult., asking for information relative to payments made by U. S. as annuities, &c., to Pottawatomies of Michigan and Indiana since 1836, and also the number of Indians that receipted for said annuities, I have to state that the records of this office show that the Chippewas, Ottawas, and Pottawatomies of Michigan, within the Mackinac Indian agency, were paid as follows:

Year.	Name.	No. paid.	Amount.
1843	Robert Stuart	253	$1,587 50
1844	Do.	269	1,587 50
1845	Wm. A. Richmond	217	1,587 50
1846	Do.	204	1,587 50
1847	Do.	244	1,587 50
1848	Do.	*260	1,587 50
1849	Chas. P. Babcock	260	1,587 50
1850	Do.	218	1,587 50
1851	Wm. Sprague	229	1,587 50
1852	Do.	214	1,587 20
1853	Henry C. Gilbert	219	1,587 50
1854	Do.	236	1,587 50
1855	Do.	236	1,587 50
1856	Do.	221	1,587 50
1857	A. N. Fitch	229	1,587 50
1858	Do.	234	1,587 50
1859	Do.	253	1,587 50
1860	Do.	236	1,587 50
1860	De Witt C. Leach	235	1,587 50
1862	Do.	247	1,587 50
1863	Do.	246	1,587 50
1864	Do.	242	1,237 50
	Principal in currency	------	1,587 50
	Gold premium in currency	------	692 24
1865	Rich'd M. Smith	232	2,279 74
1866	Do.	230	39,000 00

*Should be 276 Indians.

The latter payment was made Nov. 21, 1866, and the caption to the voucher is as follows :

"We, the chiefs, headmen, heads of families, and individuals without families of the Chippewas, Ottawas, and Pottawatomies, Michigan Indians, within the Mackinaw Indian agency, do hereby acknowledge the receipt and actual payment to us by Rich. M. Smith, United States Indian agent, in distributive shares of $169.50 each, of the sum of thirty-nine thousand dollars in currency, it being the amount allowed us by joint resolution of Congress, approved July 28, 1866, and which is in full and complete satisfaction of all claims and demands of every kind and nature whatsoever, past, present, or future, in our favor and against either the said United States or Pottawatomie nation of Indians therein, and whether such claims or demands arise out of any treaty heretofore made with us,

the said Chippewas, Ottawas, and Pottawatomies, or any band or confederation thereof or otherwise."

E. B. FRENCH,
Second Auditor.

The said distribution was made in substantially the following ratio: 253 east and 2,834 west.

VIII.

The following table is an exhibit of the different amounts specified in the various treaties and the enumeration of the Indians
49 who emigrated west of the Mississippi and those remaining east as coming within the supplemental articles to the treaty of September 26, 1833:

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade to 1856.		Amount due fifth semi-decade to 1861.		Amount due sixth semi decade to 1866.	Amount due seventh semi-decade to 1871.	Amount due in 1872 for one year.
			Yrs		*Yrs.*				
Aug. 5, 1795	$1,000	Perpetual....	5	$5,000	5	$5,000	$5,000	$5,000	$1,000
Sept. 30, 1809	500	Do.	5	2,500	5	2,500	2,500	2,500	500
Oct. 2, 1818	2,500	Do.	5	12,500	5	12,500	12,500	12,500	2,500
Aug. 29, 1821	5,000	20 years.....	.....	.....	.....	.....	.....	.....	.....
Oct. 16, 1826	2,000	22 years.....	.....	.....	.....	.....	.....	.....	.....
Sept. 20, 1828	2,000	Perpetual....	5	10,000	5	10,000	10,000	10,000	2,000
Sept. 20, 1828	1,000	20 years.....	.....	.....	.....	.....	.....	.....	.....
July 29, 1829	16,000	Perpetual....	5	80,000	5	80,000	80,000	80,000	1,600
Oct. 20, 1832	15,000	20 years	.....	.....	.....	.....	.....	.....	.....
Oct. 26, 1832	20,000	Do.	5	.....	.....	.....	.....	.....	.....
Oct. 27, 1832	15,000	12 years.....	.....	.....	.....	.....	.....	.....	.....
June 17, 1846	300	Perpetual....	5	1,500	5	1,500	1,500	1,500	300
Total	.....	.....	.....	111,500	.....	111,500	111,500	111,500	22,300

Treaty.	Annual amount.	Time.	Amount due in 1836.	Amount due first semi-decade to 1841.		Amount due second semi-decade to 1846.		Amount due third semi-decade to 1851.	
				Yrs.		*Yrs.*		*Yrs.*	
Aug. 5, 1795	$1,000	Perpetual....	$1,000	5	$5,000	5	$5,000	5	$5,000
Sept. 30, 1809	500	Do.	500	5	2,500	5	2,500	5	2,500
Oct. 2, 1818	2,500	Do.	2,500	5	12,500	5	12,500	5	12,500
Aug. 29, 1821	5,000	20 years.....	5,000	5	25,000	Exp..	.....	.....	.....
Oct. 16, 1826	2,000	22 years.....	2,000	5	10,000	5	10,000	1	2,000
Sept. 20, 1828	2,000	Perpetual....	2,000	5	10,000	5	10,000	5	10,000
Sept. 20, 1828	1,000	20 years.....	1,000	5	5,000	5	5,000	1	1,000
July 29, 1829	16,000	Perpetual....	16,000	5	80,000	5	80,000	5	80,000
Oct. 20, 1832	15,000	20 years.....	15,000	5	75,000	1	15,000	Exp..	.....
Oct. 26, 1832	20,000	Do.	20,000	5	100,000	5	100,000	5	100,000
Oct. 27, 1832	15,000	12 years.....	15,000	5	75,000	2	30,000	.....	.....
June 17, 1846	300	Perpetual....	.....	.....	.....	.....	.....	5	1,500
Total	.....	.....	80,000	.....	400,000	.....	270,000	.....	214,500

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.
1836	3,846	250	4,090	$80,000 00
1841	3,390	273	3,663	400,000 00
1846	2,231	269	2,500	270,000 00
1851	3,914	287	4,201	214,500 00
1856	3,181	281	3,462	111,500 00
1861	2,142	304	2,446	111,500 00
1866	2,202	317	2,519	111,500 00
1871	2,202	322	2,524	111,500 00
1872	2,202	322	2,524	22,300 00

IX.

The said Indians have not been paid any money of an annuity of $2,000 under the treaty of Oct. 16, 1826, for the year 1848; nor any money of an annuity of $1,000 under the treaty of Sept. 20, 1828, for the year 1848; nor of an annuity of $15,000 under treaty of Oct. 20, 1832, for the year 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852; nor of an annuity of $20,000 for the year 1852, under treaty of Oct. 26, 1832; nor of an annuity of $15,000 for the year 1844, under treaty of Oct. 27, 1832. Calculated at the ratio of 291 to 2,812, their just proportion would amount to the sum of $17,630.67 to June 30, 1892. The amounts are of the treaties set forth in finding eight, and represent omitted payments under the different treaties.

X.

During a period commencing in 1836 and extending to 1872 the relative number of Indians remaining in Michigan under said treaty of September 27, 1833, and those emigrating — in the proportion of 291 to 2,812. The said number 291 and 2,812 is an average from 1833, at the time of the treaty, — resided in the reservation in southern Michigan.

A number of other Indians residing in said reservation remained in the State of Michigan, as is shown by the findings hereafter. The court finds that the number of Indians remaining in the State of Michigan after the treaty of September 27, 1833, residing in the reservation in the Territory of Michigan, who stayed on account of their religious creed, is as set forth in findings, to wit, 291 to 2,812 emigrating under said treaty.

XI.

Many of the Indians residing in the State of Michigan on said reservations were opposed to emigrating west with the main tribe and refused to go. They were dissatisfied with the treaty which made it their duty to go, and the result was the Government had to resort to force to compel their departure. In the struggle incident to the enforcement of the treaty many Indians refused to go. Those Indians did not come within the supplemental clause of the treaty of September 27, 1827, as construed by the agents of the Government. In evading the officers and agents of the Government

they scattered into different parts of the State, many of them going to the northern portion. It is impossible to determine with substantial accuracy the number so remaining, but they outnumbered the Indians who remained by consent of the agents of the Government as coming within the exception as to removal. The two classes numbered 1,100.

XII.

A portion of the Indians who remained as coming within the exemption of the treaty of September 27, 1833, are represented in both petitions; those who did not emigrate and who were not recognized by the agents and officers of the defendants as coming within said exemption are represented in petition No. 16842.

XIII.

The payments mentioned in finding VII were made in southern Michigan, and none of the Indians so paid permanently removed to the northern part of the peninsula of the State of Michigan. The payments mentioned in said finding were made to a part of the Pokagan and a portion to the Nottawasipi bands of the Pottawatomies.

51 The rest of the Indians residing on said reservations in 1833 and 1836 received no part of said money mentioned in finding VII.

XIV.

The Indians mentioned in finding VIII, described as "those remaining East and coming within the supplemental articles of the treaty of September 26, 1833, are those parts of the Pokagans and Nottawasipi bands to whom the payment- mentioned in the said letter of Hon. E. B. French were made, as shown in finding VII.

But few of the Indians mentioned in finding VIII removed to the northern part of the peninsula of Michigan. The great body of them remained in southern Michigan and were there paid, as shown in finding VIII.

The United States never made any tender to any Indians at L'Abre Crouche; never made any payment in northern part of the State of Michigan. The agents of the Government did not insist upon the removal of the Indians as a condition of their right of payment at any time either before or at the time of payment.

Conclusion of Law.

Upon the foregoing findings the court determines, as a conclusion of law, that the Pottawatomie Indians of Michigan and Indiana are entitled to recover the sum of $104,626.

52 *Opinion. Filed March* 28, 1892.

WELDON, J., delivered the opinion of the court:

In order to judicially determine the claim of certain Indians against the United States, Congress, in the year 1890, passed an act entitled "An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana," as follows:

Whereas representatives of the Pottawatomie Indians of Michigan and Indiana, in behalf of all the Pottawatomie Indians of said States, make claim against the United States on account of various treaty provisions which, it is alleged, have not been complied with: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the said Pottawatomie Indians of Michigan and Indiana, and to render judgment thereon; power is hereby granted the said court to review the entire question of difference *de novo*, and it shall not be estopped by the joint resolution of Congress approved twenty-eighth July, eighteen hundred and sixty-six, entitled "Joint resolution for the relief of certain Chippewa, Ottawa, and Pottawatomie Indians," nor by the receipt in full given by said Pottawatomies under the provisions of said resolution, nor shall said receipt be evidence of any fact except of payment of the amount of money mentioned in it; and the Attorney General is hereby directed to appear in behalf of the Government, and if the said court shall decide against the United States the Attorney General may within thirty days from the rendition of the judgment appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered the said Pottawatomie Indians may also appeal to said Supreme Court: Provided, that the appeal of the said Pottawatomie Indians shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. That said action shall be commenced by a petition stating the facts on which said Pottawatomie Indians claim to recover, and the amount of their claims, and said petition may be verified by a member of any "business committee" or authorized attorney of said Indians as to the existence of such facts, and no other statement need be contained in said petition or verification.

Approved March 19, 1890.

On the 14th of April, 1890, a petition was filed in case No. 16473 in behalf of the Pottawatomie Indians by Mr. John Critcher, and, as it is alleged, "the authorized attorney of said Indians, as appears by agreement between said Critcher and the "business committee" of said Indians dated September 29, 1887." On the 5th day of November, 1890, another petition was filed in the name of Phineas Pam-to-pea and 1,371 other Pottawatomie Indians of Michigan and Indiana, in case No. 16842. The last petition was filed by Mr. John B. Shipman as attorney for petitioners.

On January 8, 1891, the defendants made a motion to consolidate the causes, and on January 19th, 1891, made a motion to dismiss case No. 16842; both of which motions were by order of the court reserved to be decided on the trial of the cases, which were ordered to be tried together. It is insisted by the counsel of the Government that under the act of our jurisdiction but one petition
53 can be filed, and that when case No. 16743 was brought the power and purpose of the statute was exhausted and accomplished. In this jurisdiction the substance of proceedings rather than the form is the material consideration, and the object which Congress had in the passage of the law will be accomplished if possible.

About the year 1830 the Government adopted the policy of extinguishing by purchase all the Indian title to lands east of the Mississippi, and in pursuance of that policy on the 26th and 27th of September, 1833, entered into two treaties with the United Nation of Chippewa, Ottawa, and Pottawatomie Indians, by virtue of which the United States purchased from said United Nation 5,000,000 acres of land on the western shore of Lake Michigan, besides three reservations in the southern part of the then Territory of Michigan. (Vol. 7, Stat. L., 442.) One of the conditions of the purchase was that the said United Nation should within three years remove to a tract of country west of the Mississippi, to be assigned to them by the President, to be not less than 5,000,000 acres.

To the treaty executed on the 27th of September, which was and is supplementary to the treaty of the 26th, there is attached the following provision: "On behalf of the chiefs and headmen of the United Nation of Indians who signed the treaty, to which these articles are supplementary, we hereby in evidence of our concurrence therein become parties thereto; and as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested on account of their religious creed permission to remove to the northern part of the peninsula of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservation on which they now reside shall be paid to them at L'Arbe Croche." (7th vol. Stat. L., 442, 445.)

This supplementary clause to the treaty of the 27th of September, 1833, has been and is now the source of the contention and difference between the defendants and that portion of the United Nation which did not emigrate beyond the Mississippi river with the Pottawatomie tribe. Under the terms of this supplement a portion severed its connection with the United Nation and thereby lost its identity with the Pottawatomies as a tribe, in order that it might avail itself of the privilege of remaining in the Territory of Michigan. In ceasing to be a part of the United Nation it did not retain any part of the political or corporate power of the tribe that was undivided and still inherent in the body which emigrated beyond the Mississippi pursuant to the terms and requirements of the treaty. The portion remaining may have acquired a right to share in the

annuities, but the corporate power of the tribe remained intact and incident to the larger body which had emigrated.

The reservation spoken of in the treaty consisted of 164 sections and was situated in the southern portion of Michigan, not far from the State line of Indiana. In case No. 16743 the petition assumes to represent 91 Indians, who are the representatives, as it is alleged, of a part of the band residing on the reservations in the Territory of Michigan. The petition in No. 16842 assumes to represent 1,371 Indians, who are alleged to be a part of the United Nation occupying the reservations ceded by the supplementary treaty of September 27th, 1833, and which were and are included in the exception (as to removal) of the supplementary clause of the treaty of September 27th.

54 It is contended by counsel in 16743 that the petitioners in case No. 16842 have no rights under the treaties of 1833, and therefore no legal capacity to appear, by independent or supplemental petition, and that whatever judgment is recovered must be for the benefit of the 91 persons and those they represent, to the exclusion of any claim upon the part of the individuals represented in case No. 16842. The petitioners in the latter case concede the right of the parties in case No. 16743 to bring the suit and have their claims adjudicated; but insist upon an equal right of investigation and determination.

The preamble to the special law of jurisdiction recites, "Whereas representatives of the Pottawatomie Indians of Michigan and Indiana in behalf of all the Pottawatomies of said States make claim against the United States on account of various treaty provisions which it is alleged have not been complied with, therefore the Court of Claims is hereby authorized to take jurisdiction and try all questions of difference arising out of treaty stipulations with the said Pottawatomie Indians of Michigan and Indiana." The right to sue in some form is given to "all the Pottawatomie Indians" of Michigan and Indiana, and the plaintiffs or petitioners in such a suit are subject only to the qualification or limitation of being Pottawatomie Indians of Michigan and Indiana. The qualification is well defined, and the right extends to all having that qualification. Some of the persons directly represented in the first petition are descendants of persons who belonged to a particular branch of the United Nation, and some of the persons named in the second petition are descendants of other persons who belonged to the same band or other bands of Pottawatomies.

In the legislation of our jurisdiction Congress have recognized the fact and condition that representatives of the Pottawatomie Indians of Michigan and Indiana in behalf of all the Pottawatomies of said States make claim against the United States on account of various treaty provisions, and upon that fact and condition have provided a jurisdiction in this court to determine all questions of difference between the United States and said Indians. The purpose of the statute is to settle in an authoritative and judicial form all questions of difference arising from the claim of Pottawatomie Indians of Michigan and Indiana, and any proceeding which accomplishes

that purpose, irrespective of technical rules of pleading is proper and legal under the law of our jurisdiction.

The second section provides that said action shall be commenced by petition, stating the facts, and that the same may be verified by a "business committee" or authorized attorney of said Indians. Each of the petitions in this proceeding is verified by the affidavit of the attorney, appearing in each case, and in that particular are identical. In each case it appears that by special appointment the attorneys represent some of the Pottawatomies who remained in the States of Indiana and Michigan under the supplementary article to the treaty of 27th of September, 1827. In this view of the statute the court allows the motion of the defendants to consolidate the cases made on the 8th day of January, 1891, and overules the motion to dismiss cause No. 16842, made on the 19th January, 1891.

This brings the issue by both petitions to the consideration of the court, to be disposed of upon the broad ground of the right
55 of all the Pottawatomies of Michigan and Indiana. Congress have recognized by the very title of the act a claimant designated as the "Pottawatomie Indians of Michigan and Indiana," and under that generic head is to be determined the aggregate right of such claimant, leaving the question of distribution to that department of the Government which by law has incumbent on it the administration of the trust which in legal contemplation exists between the United States and the different tribes of Indians. Irrespective of the technical question of who has the right to maintain a suit under the statute, whatever claim any or all of the Indians may have against the defendants grows out of the alleged supplementary article to the treaty of 27th September, 1833. If this is the law, it is a recognition on the part of the defendants of a separate and independent right of a part of the United Nation of Chippewa, Ottawa, and Pottawatomie Indians to a division of and a participation in a portion of the fund belonging to the whole nation. It is insisted by counsel for the defendants that said article is no part in law of the treaty of 1833; that it is not binding on the United States; that it is unilateral in form, being unsigned by the commissioners, and that it is not a part of the treaty of the 27th, which it purports to be.

Upon examination of the seventh volume of "United States Statutes at Large," p. —, entitled the Indian treaties, we find said supplemental article attached to the supplementary articles of the 27th of September, 1833, being supplementary to the treaty of the 26th of September, 1833. The volume of Indian treaties was published by authority of Congress in the year 1861, and the rights of the United States in the stereotype plates is recognized according to the provisions of the joint resolution of Congress passed on the 3d day of March, 1845. Said article has been recognized and acted upon by the executive department of the Government since the year 1833. It was proclaimed by the President as a part of the treaty when the treaty was promulgated, and its binding force is recog-

nized by the provisions of the law of our jurisdiction, because without it the claimant would have no standing in the court.

The fact that the commissioners did not sign it does not invalidate it as a subsisting and binding obligation, as the constitutional right of the President to make a treaty, with the concurrence of the Senate, does not depend upon the action of the commissioners designated to negotiate with the other contracting party.

It is insisted upon the part of counsel for the defendants that the removal of the Indians was a condition precedent to their right to participate in the general fund of the United Nation recognized by the treaties of the 26th and 27th days of September, 1833.

That cannot now be considered as an original question. The Government, by its agents, laws, and resolutions of Congress, has treated the removal and continued residence in the northern peninsula of Michigan as immaterial, and it is now too late to attempt to engraft upon the right of the Indians a removal and continued residence as a condition precedent to their right to participate in the funds arising from the various treaties made with the United Nation.

The litigation arises from the provisions of the statute giving this court jurisdiction as applied to the various treaties made between the defendants and the Indians tribes which constituted in
56 law and fact the representatives of the claimants from the year 1797 to 1836, at which time the main body of the Indians removed west of the Mississippi, leaving the claimants in the States of Michigan and Indiana under the supplemental clause of the treaty of the 27th of September, 1833, already quoted. These suits were brought to recover the alleged share of claimants to annuities secured to them under said treaties.

The consolidated record represents two claimants, each insisting upon a very different result and liability against the defendants. The petition in No. 16743 claims as the balance due from the United States the sum of $223,035.46 as the just proportion of the Pottawatomie Indians of Michigan and Indiana under the supplementary articles to the treaty of September 27, 1833, while the petition in the case No. 16842 upon like grounds claims the sum of $963,058.50 as due the entire body, $804,383.80 of which it is alleged belongs to the petitioners represented in said case. It is rather strange that two claimants, predicating their rights upon substantially the same legal grounds, should differ so materially upon the details of the demand and the aggregate liability of the defendants. The petitioners in case No. 16842 reduce in their request the amount of their claim to $728,907.94, which leaves a difference between them and the claimants in No. 16743 of more than five hundred thousand dollars.

The difference in the demands arises from the fact that in No. 16743 the proportion of the fund due at and from the making of the treaty in 1833 is based upon a ration of less, 300 to about 4,000, while in No. 16842 it is based on a ration of nearly 1,200 to about 4,000. The subject-matter of this claim has been a source of contention between the claimants in 16743 and the defendants since 1836 that being the time when, under the treaty of 1833, the Pottawat-

omies were to emigrate to lands west of the Mississippi. The claim has been before Congress at many sessions and the subject of investigation and statement in the Indian Department at various times.

In 1866 an appropriation of $39,000 was made in pursuance of a settlement made between the claimants in 16743 and the defendants, which sum was paid and accepted by them in fulfillment and consummation of that settlement, but the act of our jurisdiction provides that we shall not be estopped by "the joint resolution for the relief of certain Chippewa, Ottawa, and Pottawatomie Indians nor by the receipt in full given by said Pottawatomies under the provisions of said resolution, nor shall said receipt be evidence of any fact except the payment of the amount of money mentioned in it." The thirty-nine thousand dollars appropriated and accepted is to operate simply as the payment of that much money on account, leaving the question of differences to be adjusted upon the merits of the whole claim. There is no dispute as to the amount paid the claimants since 1836. Besides the amount of thirty-nine thousand dollars under said resolution, the claimants in 16743 have received the further sum of $36,162.50, making in the aggregate the sum of $75,162.50.

The claim in 16842 is based upon the contention that the number of Indians remaining on the reservation in the Territory of Michigan at the time of emigration was 1,173, besides those of 16743, and that the funds arising from the different treaties in which the Michigan Indians have a right to participate must be distributed upon that basis.

57 As has been said, the policy of the defendants in making the treaty of 1833 was to have the Indians emigrate west of the Mississippi, and it would be remarkable indeed if they agreed to a supplementary and subsidiary clause to said treaty, the effect of which would be to permit so many to remain in the State of Michigan. The testimony taken in No. 16842 upon the question of the number remaining, coming from the sources it does, is very unreliable as tending to any definite or satisfactory results. The evidence in the cause indicates that the Indians were very loth to leave the State of Michigan; that the Government was compelledto resort to force in order to compel the emigration, and it is not strange that many Indians remained, in violation of their duty to emigrate, who did not come within the exception. The Government officers, commencing with 1843, in the distribution of the annuity of 18,000, after an examination and inquiry satisfactory to themselves, and presumably to do justice between the Indians remaining and those emigrating, ascertained and determined the number as coming within the clause, giving the right to stay at 253, and for a period of twenty-three years the defendants distributed the annuity of $1,587.50 and the $39,000 upon a basis ranging in numbers from 204 to 260, the first being in 1843 at 253 and the last being in 1866 at 230. During all of that time the United States, by its officers and agents, proceeded in the belief that those numbers represented the class which was to participate in the annuity fund without being

compelled to remove beyond the Mississippi with the main body of the nation, and the claim now made in 16842 for more than fourteen hundred first assumed definite form when the statute of our jurisdiction was passed.

This claim as embraced in case No. 16743 has been before Congress, and reports of different committees have reached different results, but Congress and the departments have, in all their investigations, assumed the number of Indians remaining under the clause of the treaty entitling them to remain at substantially the number claimed by the petitioners in 16743. There being no dispute as to the amount paid by the Government, and it being expressly provided that the $39,000 paid under the joint resolution shall be paid on account only, the liability of the defendants is settled by the ratio of the Indians remaining to those emigrating.

In finding VIII will be found a table which gives the relative number for a period of thirty-six years antedating the time of the table in finding VII, and on which the $1,587.50 was distributed, and covering a period of six years later than the table in finding VII. By reference to these findings it will be seen that they only differ slightly in the number of persons remaining, but they differ substantially in the number of Indians removing. That table (in finding VIII) was prepared by the officers of the department, and it seems to have been recognized in such a way as that it becomes to the court the most reliable data on which to predicate a finding of the relative proportion of those emigrating and those remaining. The average extending through the thirty-six years is as 291 is to 2,812.

In the preliminary opinion the question whether under the additional article to the supplemental articles of September 27, 1883, to the treaty of September 26, 1833, the $38,000 passed *in solido* to the petitioners or only "a just proportion" of the same was not decided. It was reserved for the final determination of the court upon the coming in of the statement of the account upon the ratio indicated in the preliminary statement.

58 The clause to the supplemental articles from which the rights of the petitioners originate is as follows: "* * * it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservation on which they now reside shall be paid to them at L'Arbe Croche." (7 vol., Stat. L., 445, entitled "Indian Treaties.")

Both classes of claimants insist that the proper construction of said article is that the petitioners are entitled to recover in this proceeding the gross sum of said annuity and not "a just proportion." The counsel for the Government insist that it is to be distributed in a just proportion.

This claim of petitioners is not without persuasive construction in their favor. In the report of the Committee on Indian Affairs of the Senate of the United States entitled "Senate Report No. 121, Forty-second Congress, second session," it is said: "The annuity of $1,587.50 paid the Michigan Indians from 1843 to 1865 was regarded

by the Commissioners as their just proportion of an annuity of $16,000 pledged by the treaty of 1829 and of the $2,000 made payable annually by the supplementary treaties of September 20, 1883.

"Whereas, in the judgment of your committee as expressed in their construction of this and the several treaties, they are entitled to the entire annuity of $20,000."

This construction of the rights of the petitioners is concurred in by the report of the Committee on Indian Affairs of September 25, 1888, of the Fiftieth Congress, first session, report No. 3502.

The same view of the extent of the rights of the petitioners was taken by the Commissioner of Indian Affairs in his reply of May 12, 1890, to the honorable Secretary of the Interior.

The amount of this annuity in gross is claimed and stated at the sum of $38,000, which, upon the construction herein indicated, goes to the exclusive benefit of the petitioners, and is to be added to the sum to which they are entitled. We do not think the words of the article providing in favor of the remaining Indians will bear the construction contended for by the petitioners. They were to have, as we construe the words of the treaty, "a just proportion" of the annuities arising from all the treaties provided for in the supplemental articles of the 27th of Sept., 1833. Those who emigrated under the supplemental articles did not lose their right to participate in the general fund because of the additional clause to said articles. They were not parties to it, and their rights should not be affected by it. To give the whole of the annuity to the remaining Indians would be enlarging the additional article beyond the purpose of its adoption and in violation of the obvious construction of the language employed in its terms. The remaining Indians simply obtained by the addititional article exemption from the obligation of removal and the right to enjoy their share or "just proportion" of the money arising from the provisions and stipulations of the treaty. For these reasons we are constrained to determine that in this proceeding the petitioners are only entitled to "a just proportion" of the $38,000 provided for in the supplemental articles of Sept. 27th, 1833.

The account may be stated as follows:

Of the sum of $1,432,800, as shown in finding, the proportion of 292 to 3,103 makes the sum of $134,368.26.

59 Proportion of the $38,000 annuity (of $2,000), $3,653.60.

Same proportion of annuities, $41,626.00, being the amount due claimant from the perpetual annuities of $22,300.

From which deduct the sum paid, $75,162.50.

It is insisted by counsel for the petitioners that in the judgment to be rendered by this court we are to consider perpetual annuities ended and allow a gross sum for the value of the same. That view was taken by the committees of Congress; but in legislating upon the subject Congress had complete control of the matter and might exercise their discretion upon the grounds of public policy. We must follow the statute of our jurisdiction and determine the rights of the parties as it directs and intends. The purpose of the law was to ascertain the state of the account between the parties and render a judgment for what might be due the petitioners, if anything. It

did not intend to precipitate the payment of perpetual obligations, but to ascertain the present state of indebtedness. It is true that we are empowered "to review the entire question of difference *de novo*," but it does not follow from that provision of the statute that perpetual annuities are to be treated as consummated obligations. That provision of the statute was evidently intended to destroy the legal effect of the resolutions referred to in the law and the receipt in full which was executed by the petitioners when the $38,000 was paid to them in 1866.

We therefore hold that permanent annuities did not mature as present obligations by the terms of law under which we are proceeding, and we are not authorized to allow the item of $41,626, representing the perpetual annuity of the just proportion of claimants in the annuity of $22,300. There is no dispute as to the amount paid petitioners. They received the sum of $39,000 under the joint resolution of Congress and the additional sum of $36,162.50, as shown in finding VII.

There is another item in the account and contention of claimants, to wit, the sum of $17,630 as their just proportion of certain omitted payments, as shown in finding IX. The sum of $134,368.26 necessarily includes this claim, and as that is an exhibit of the full amount due the claimants under all the treaties, *and* the fact that there was an omission to pay for the years stated would not increase the amount due the claimant in finding VIII, which states the different accruing rights of the Indians who are parties to the various treaties from and through which the claimants derive their title to share under the additional clause to the supplemental treaty of September 27, 1833.

The case as it existed in the testimony, consisting of oral proof, documents, and reports, and the different results as shown by the conclusions and judgment- of the different departments and committees, made its elements most difficult to adjust upon a basis satisfactory to the requirements of judicial accuracy.

The claimants in No. 17682 insisted upon a claim represented by the asserted rights of more than 1,200 persons as coming within the purpose and intent of the supplemented article to the treaty of September 27, 1833.

The Government, from the time its attention, through its officers, was directed to the rights and interests of the non-emigrating Indians, calculated their numbers at substantially the number which is the basis of the ratio which we find in determining the just proportion existing between the emigrating and non-emigrating
60 Indians of the Pottawatomie nation coming within the supplemental clause. Allowing to the Pottawatomie Indians of Michigan and Indiana what they are entitled to under the various treaties, after deducting the payments, a judgment of one hundred and four thousand six hundred and twenty-six dollars, as shown in the conclusion of law attached to the findings, will be entered.

NOTT, *J.*, concurring:

It seems to me that if any of these Indians are entitled to the un-

paid annuities in the Treasury they are those who went west in conformity with the terms of the treaty and those who went north in conformity with the intent of the supplemental article; but I concur in the judgment of the court as the simplest method for bringing the whole subject of their conflicting rights to the final arbitrament of the Supreme Court.

61 *Final Judgment, June* 27, 1892.

At a Court of Claims held in the city of Washington, D. C., on the twenty-seventh day of June, A. D. 1892, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimants and do order, adjudge, and decree that the said Pottawatomie Indians do have and recover of and from the United States the sum of one hundred and four thousand six hundred and twenty-six dollars ($104,626.00).

62 *Claimants' Application for and Allowance of Appeal. Filed July* 22, 1892.

In the Court of Claims of the United States, Dec. Term, 1891–'92.

THE POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
v.
THE UNITED STATES. } No. 16743.

PHINEAS PAM-TO-PEE AND 1,371 OTHE- POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
v.
THE UNITED STATES. } No. 16842.

From the judgment rendered in the above-entitled cause on June 27, 1892, in favor of the claimants, the claimants, by their attorney, on the 22nd day of July, 1892, make application for and give notice of an appeal to the Supreme Court of the United States.

JOHN B. SHIPMAN,
Claimants' Attorney in No. 16842.

Filed and allowed in vacation, July 22, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

63 In the Court of Claims.

THE POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
vs.
THE UNITED STATES. } No. 16743.

PHINEAS PAM-TO-PEE AND 1,371 OTHER POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
vs.
THE UNITED STATES. } No. 16842.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled causes of the findings of fact by the court and the the conclusion of law thereon, of the opinion of the court, of the application of the claimants, and the allowance of an appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 28th day of July, A. D. 1892.

ARCHIBALD HOPKINS,
Chief Clerk.

64 Court of Claims.

THE POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
vs.
THE UNITED STATES. } 16743.

PHINEAS PAM-TO-BEE AND 1,371 OTHER POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
vs.
THE UNITED STATES. } 16842.

From the judgment rendered in the above-entitled causes on the 27 June, 1892, in favor of claimants the claimants, by their attorney, on the second day of August, 1892, make application for and give notice of an appeal to the Supreme Court of the United States.

[Seal Court of Claims.]

JOHN CRITCHER,
Attorney for Claimants in No. 16743.

Filed and allowed in vacation, Aug. 2, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

65 In the Court of Claims, Washington, D. C.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing is a true copy of the application of the attorney for the claimants in case 16743 for the allowance of an appeal to the

Supreme Court of the United States and of the allowance of same; the same to be annexed to and form part of the record on appeal already filed in cases Nos. 16743 and 16842.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 15th day of August, 1892.

JOHN RANDOLPH,
Ass't Clerk, C't of Claims.

Endorsed on cover: Case No. 15,095. Court of Claims. Term No., 1125. Phineas Pam-to-pee and 1,371 other Pottawatomie Indians of Michigan and Indiana, appellants, *vs.* The United States. Filed August 2, 1892. Case No. 15,103. Term No., 1133. The Pottawatomie Indians of Michigan and Indiana, appellants, *vs.* The United States. Filed August 16th, 1892.

148 U.S. 691

Office Supreme Court U. S.
FILED.
JAN 3 1893
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 1325.

PHINEAS PAM-TO-PEE and 1,371 other Pottawatomie Indians of Michigan and Indiana.
vs.
THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANTS.

JOHN B. SHIPMAN.

PRINTED AT
THE SUN OFFICE,
COLDWATER, MICH.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 1125.

PHINEAS PAM-TO-PEE and 1,371 other Pottawatomie Indians of Michigan and Indiana.
vs.
THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANTS.

JOHN B. SHIPMAN.

STATEMENT.

An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana was passed by Congress and approved March 19, 1890. It was enacted in behalf of all the Pottawatomie Indians of those States. By it the Court of Claims was authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with said Indians and to render judgment thereon, power being granted the Court to review the entire question of difference *de novo* with the right of appeal to this Court.

St. U. S. 1889 and 1890 p. 24.

Nominally, under this the petition in case, Term No. 1,133, entitled "The Pottawatomie Indians of Michigan and Indiana," against the United States, was filed, the claim being stated precisely as admitted by the Department of the Interior, the jurat reciting it was verified by "the authorized attorney of said Indians, (as appears by agreement between said Critcher and the business committee of said Indians,) dated 29 September, 1887," but this fact was not sworn to (1-9).

Later, the petition in Term No. 1,125 entitled "Phineas Pam-to-pee and 1,371 other Pottawatomie Indians of Michigan and Indiana" against the United States was filed naming the petitioners therein giving their residences and generally their occupation; averring they were not parties to the suit mentioned or represented in No. 1,133. That the agreement referred to in the jurat to that position disclosed that the attorney therein had authority to act only for 91 Indians and that the petitioner in No. 1,125 had applied to him for permission to take part in the suit and amend the petition so as to properly present the claims of all included in the act of Congress mentioned, and he refused to accede to such request, but that they filed their petition on behalf of themselves and all other Indians included in said act who might choose to come in and share in the proceedings, including the 91 mentioned in the other case. This petition enlarged the claim before presented and in the one wherein I appear and in support of which this brief is made (10-24).

The suits were consolidated by the Court of Claims and heard together and a decree or judgment entered

against the defendants for $104,626, and in favor of a part of the claimants a portion of whom are in each case. Both causes were appealed by the claimants acting severally.

The questions of difference referred to in the act arise upon the construction of a treaty made between the Indians and the United States, September 26 and 27, 1833, and the application of the facts thereto; but to be understood it must be read by the light of surrounding circumstances. This was the situation when it was made:

The tribe had 5,104,960 acres of land as a reservation, 5,000,000 of it lying upon the western shore of Lake Michigan. The rest was in Michigan.

The tribe was also entitled under different treaties to six temporary annuities expiring at different times in the future, and to six perpetual annuities, the latter amounting to $22,300 a year. The claimants and the Government agree as to the amount in both classes of annuities payable since 1835, no claim being made for those falling due before 1836. The amounts are as follows:

TEMPORARY ANNUITIES.

Under Art. 4, Treaty Aug. 29, 1821, amount $5,000. Time 20 years—unexpired 6 years, 7 St. at L. 220	$ 30,000
Under Art. 3. Treaty Oct. 16, 1826, amount $2,000. Time 22 years—unexpired 13—7 Ib. 206	26,000
Under Art. 2, Treaty Sept. 20, 1828, amount $1,000. Time 20 years—unexpired 13—7 Ib. 317	13,000

Under Art. 3, Treaty Oct. 20, 1832. Amount $15,000. Time 20 years—unexpired 17—7 Ib. 279..... 255,000

Under Art. 3, Treaty Oct. 26, 1832. Amount $20,000. Time 20 years—unexpired 17—7 Ib. 395..... 340,000

Under Art. 4, Treaty Oct. 27, 1832. Amount $15,000. Time 12 years—unexpired 9—7 Ib. 401..... 135,000

PERPETUAL ANNUITIES.

Under Art. 4, Treaty Aug. 3, 1795—Am't $1,000—7 Ib. 51.

Under Art. 3, Treaty Sept. 30, 1809—Am't $500—7 Ib. 114.

Under Art. 3, Treaty Oct. 2, 1818—Am't $2,500—7 Ib. 185.

Under Art. 2, Treaty Sept. 20, 1828—Am't $2,000—7 Ib. 317.

Under Art. 2, Treaty July 29, 1829—Am't $16,000—7 Ib. 320.
Yearly amount $22,000—Time 57 years including 1892.....$1,254,000

Under Art. 10, Treaty of June 17, 1846, they are entitled to a perpetual annuity of $300 given in lieu of certain chattels promised by Art. 3, of Treaty of Sept. 20, 1828—9 St. at L. 855. Time including 1892, 46 years..... 13,800

Total annuities of both classes.....$2,066,800

This being the situation, on Sept. 26, 1833, at Chicago, a treaty was made whereby the Indians ceded to the United States the reservation on the western

shore of Lake Michigan. In part consideration of which the United States granted them 5,000,000 of acres of land for a reservation west of the Mississippi river and also agreed to pay various items of money to sundry individuals and for various specific purposes, and in addition to pay to the tribe $280,000 in annuities of $14,000 a year for 20 years. A just proportion of the annuity money secured by that as well as by former treaties was to be paid west of the Mississippi to such portion as should remove there during the next three years: after which time all was to be paid at their location west of the Mississippi.

On Sept. 27, 1833, supplementary articles joined in by the Michigan portion of the band were added, whereby the 104,960 acres of land (divided into three reservations) in Michigan was ceded to the United States. In consideration of which it was agreed by the United States that the Michigan portion of the tribe should be considered as parties to the main treaty and be entitled to participate in all the provisions therein contained as a part of the tribe; and in addition it is agreed to pay certain individuals and for different purposes, various sums of money, and also $40,000 in annuities of $2,000 a year for 20 years in addition to the $280,000 inserted in the main treaty and divided into payments of $14,000 a year as stated; but as a part of the band residing on the reservations in Michigan had requested permission to remove to the northern part of the peninsula of Michigan it was agreed in case of such a removal the just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservation on which they then resided should be paid to

them at L'Arbre-Choche, a place in Emmet County, close to the Straits of Mackinac.

All the Indians on the Michigan reservations were to remove therefrom in three years, that is, by 1836.

To be exact, the material parts of the treaty are copied:

In the main treaty of September 26, 1833, Art. 1. ceded to the United States the 5,000,000 acres of land mentioned along the western shore of Lake Michigan.

Art. 2. Granted 5,000,000 acres for a reservation west of the Mississippi as a part consideration for this cession.

Art. 3. Aside from the various sums devoted to specific purposes, reads as follows: "And in further consideration of the above cession, it is agreed, that there shall be paid by the United States the sums of money hereinafter mentioned to-wit: * * *

Two hundred and eighty thousand dollars to be paid in annuities of fourteen thousand dollars a year for twenty years. * * * * * *

Art. 4. A just proportion of the annuity money secured as well by former treaties as the present, shall be paid west of the Mississippi to such portion of the nation as shall have removed thither during the ensuing three years. After which time the whole amount of the annuities shall be paid at their location west of the Mississippi."

7 St. at L. 431-441.

The Supplementary Articles of Sept. 27, 1833, recite they were made by the Chiefs and Head-men of the Indians "residing upon the reservations of land sit-

uated in the Territory of Michigan south of the Grand River" of the second part.

"Article 1. The said Chiefs and Head-men cede to the United States all their lands situated in the Territory of Michigan south of the Grand River, being the reservation at Nottawasepi of 4 miles square contained in the 3d clause of the 2d article of the treaty made at Chicago on the 29th day of August, 1821; and the ninety-nine sections of land contained in the treaty made at St. Joseph on the 19th day of September, 1827; and also the tract of land on the St. Joseph River opposite the town of Niles and extending south to the line of the State of Indiana, on which the villages of To-pe-nee-bee and Pokagon are situated, supposed to contain about 49 sections.

Art. 2. In consideration of the above cession it is hereby agreed that the said Chiefs and Head-men and their immediate tribes shall be considered as parties to the said treaty to which this is supplementary and be entitled to participate in all the provisions therein contained as a part of the United Nation; and further that there shall be paid by the United States the sum of $100,000 to be applied as follows: (Here follows a specific disposition of $60,000 of it.)

"*And $40,000 to be paid* in annuities of $2,000 a year for twenty years in addition to the *two hundred and eighty thousand dollars inserted in the treaty and divided into payments of fourteen thousand dollars a year.*

"Art. 3. All the Indians residing on the said reservations in Michigan shall remove therefrom within three years from this date, during which time they

shall not be disturbed in their possession nor in hunting upon the lands as heretofore. In the meantime no interruption shall be offered to the survey and sale of the same by the United States. In case, however, the said Indians shall sooner remove the Government may take immediate possession thereof.

"On behalf of the Chiefs and Head-men of the United Nation of Indians who signed the treaty to which these articles are supplementary we hereby in evidence of our concurrence therein become parties thereto

"And, as since the signing of the treaty *a part of the band residing on the reservations in the Territory of Michigan* have requested on account of their religious creed *permission to remove to the northern part of the peninsula of Michigan*, it is agreed that in case of such removal *the just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservations on which they now reside*, shall be paid to them at L'Arbre-Croche."

7 St. at L. 442-445.

In 1836 the Indians who had emigrated west of the Mississippi numbering 3,840 (erroneously printed in the table as 3,846). Eleven hundred of those residing on the reservations in Michgan did not go west with the tribe but remained in Michigan, 250 of these continuing to reside in the southern portion while the rest of the 1,100 in obedience to the requirements of the treaty removed to the northern part of the State. While the findings of fact do not harmonize, this is stated as a conclusion drawn from reading them all together. Beginning in 1843, seven years

after all who intended to obey the treaty had gone to the northern part of the state, and yearly thereafter until 1864, a government disbursing officer paid those who did not obey the treaty but remained in Southern Michigan $1,587.50 and certain other sums up to 1866, the whole amounting to $75,162.50, but those who had obeyed the treaty by removing to the northern part of the peninsula were paid nothing. Those paid were a portion of the Indians on the 49 section and 4 mile square reservations mentioned, their numbers yearly being shown in the list from the office of the second auditor of the Treasury made by Hon. E. B. French (32). The payments were not made at L'Arbre-Croche, the place specified in the treaty, but in the southern part of the State, hundreds of miles therefrom. The United States never made a tender to any Indians at L'Arbre-Croche and never made any payment in the northern part of Michigan.

The Court below decided that those Indians who did not obey the treaty by removing to the northern part of the peninsula of Michigan, viz: the 250 who remained in Southern Michigan, only, had a right under the treaty to remain in Michigan and hence were the only ones entitled to be paid the proportion of annuities and for the reservation therein agreed to be paid, while the 850 who kept the covenant were entitled to nothing under it, because of the action of said government paymaster.

In computing the amount due, however, the Court adopted a Department table in arriving at the proportion of those emigrating and those remaining differing from the numbers given in the list from the Second Auditor's office, and the result reached was arrived at

by averaging the numbers west and east each semi-decade from 1836 to 1872 as shown by the table (34) and dividing the annuities in that ratio. But nothing was allowed the Michigan Indians upon the annuity of $280,000 inserted in the 3d Art. of the main treaty and divided into payments of $14,000 a year, and which is also contained in the 2d Supplementary article referred to. Nothing was allowed for the reservation west of Lake Michigan.

II.

The decree below is erroneous in this:—

1. In not embracing and computing the amount due the claimants upon the basis that 1,100 Indians remained in Michigan under said treaty and Articles Supplementary.

2. In excluding from sharing in the annuities and in the amounts to be paid for the reservations ceded by said treaty and supplemental articles, those Indians residing upon the reservations in Michigan who in obedience thereto removed to the northern part of the peninsula of Michigan, and in not including them as entitled to share therein.

3. In not allowing to the claimants a proportion of the $280,000 inserted in the main treaty and divided into annuities of $14,000 a year, which is mentioned in Art. 2 of the supplemental treaty.

4. In not allowing the claimants a proportion of the proceeds of the 5,000,000 acre reservation west of the Mississippi received in exchange for the one on

the west shore of Lake Michigan when it was ceded to the United States by the treaty of June 17, 1846.

5. In not awarding to the claimants a just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservation on which they resided when the said treaty of Sept. 26 and 27, 1833, was made.

III.

THE BASIS FOR THE COMPUTATION ADOPTED BY THE COURT:

It would seem plain enough that this must be made upon the basis agreed upon in the treaty, but the Court below did not do so. Instead it made it upon the theory that a government agent had authority to determine what Indians might remain east under the treaty and share in the payments mentioned, and then assumed that in making the payments referred to from 1843 to 1866 in Southern Michigan to the Indians found there, the authority has been exercised and the matter settled.

Findings of fact VIII. XI. XIV. (33-35)

It does not appear that in making those payments the "agents" knew they were clothed with any such power, or aware they were exercising it. Nor that they made any attempt to be correct, or report their doings to any department of the government except the disbursing Bureau of the Treasury, and here they simply filed vouchers for the funds disbursed, the number of the Indians paid varying each year, the greatest being 269 and the lowest 204, (32). Which number were authorized to remain!

Between the place where the payments were made and L'Arbre-Croche stretched 250 miles of forest; and the payments did not commence until 1843, seven years after all Indians intending to obey the treaty had gone to the northern part of the peninsula. Under the findings this class who kept the treaty are made to lose by reason of having done so, while the other class profit by breaking it.

I insist that it was legal error for the Court to even find that by making those payments the government agents recognized those to whom they were made as the only Indians entitled to remain in Michigan under the treaty, for under the circumstances appearing they had no tendency to establish that fact. If the paymasters intended to "ascertain and determine" the number remaining in Michigan under the treaty, why did they not go where the treaty required the Indians to be? Why go only where they had no right to be to look for them? The Indians obeying the treaty cannot be charged with knowlege that the agreement to pay at L'Arbre-Croche would be violated by the government disbursing officers and payments be made elswhere. Those going north all acted upon the belief that payments would be made at the place agreed upon and nowhere else. To use the fact that they did not go back to Southern Michigan to share in payments which were there wrongfully made makes the treaty a fraud upon them; a mere trick to get them away north while payments could be made elswhere. Out of this wrong no presumption of justice to the Indians can arise, whatever may have been the intention of those making them.

But while finding XIV. (35) says the Indians en-

titled to remain in Michigan are those "to whom the payments mentioned in the said letter of Hon. E. B. French were made as shown in finding VII." (32) in making the computation the Court adopted an entirely different basis, using instead a table in finding VIII. "prepared by officers of the department" (42, 34) differing widely from the numbers given in the letter. The origin of this table is a judicial mystery.

The ratio used for the computation however seems to vary, for while in findings IX. and X. it is stated at 291 to 2,812 (34) and also in one place in the opinion (42,) on the next page it is given at 292 to 3,103. But to use either must result in error. The temporary annuities expiring at different times the proportion of those emigrating west to those remaining east must be computed upon the ratio of those east and west when they were payable. One expired in 1842 and all by 1853. To make a division of any annuity upon a ratio not existing until afterwards is necessarily wrong.

The power to make treaties is vested in the President and Senate exclusively. As government paymasters or other department officers cannot make a treaty, they cannot change one after it is made. Whenever it becomes necessary to resort to the acts of parties to construe a document, the acts of both parties to it must be considered, not of one alone. The very fact that 1,100 of the Michigan Indians remained east shows how they construed the treaty and the fact that they were permitted to remain also shows how the government regarded it. While the additional fact that 850 of them complied with the very letter of the treaty by removing to the northern part of the penin-

sula and have remained there ever since with the acquiescence of the United States, is, at least as to them, conclusive upon the question if the acts of the parties are necessary to determine its meaning. Yet in the face of these facts and against the plain language of the treaty itself, the Court denied the claim of those north to share in their former annuities which they had done nothing to forfeit, or to receive any pay for the reservation which they then ceded. The gross injustice of this ruling is apparent. And the only pretense of a reason for it is that the government officers failed to do their duty by going to L'Arbre-Croche to pay them as in the treaty the United States agreed they should. The defendants' own wrong is thus made to cancel its debt to the Indians.

Rights given by a treaty are not only vested but its terms become "the supreme law of the land," and courts can no more go behind it to annul its effects and operation than they can behind an act of Congress.

Fellows vs. Blacksmith 19 How. 366,372.

The construction of a treaty made with the Yankton Sioux in regard to certain lands, was involved in the *United States vs. Carpenter*, 111 U. S. 347. The Commissioner of the General Land Office had acted upon a construction which was wrong and the Court expressly decide that the purpose and the stipulation of the United States could not be defeated by the action of any officer of the department. While in *Migo vs. McClung*, 9 Cranch 11, the Court declares that the acts of government officers cannot even be admitted to give an explanation to a treaty which would contradict its plain words and obvious meaning.

Any other rule would abrogate the power to make treaties placed in the President and Senate and confer it upon department officers.

The construction of the treaty and what Indians under it were entitled to remain in Michigan is a question of law to be settled by the Court from the treaty itself and the Court erred in leaving it to government paymasters.

THE BASIS FOR THE COMPUTATION AS DEFINED BY THE TREATY:

As between civilized nations, treaties should be liberally construed so as to carry out the apparent intention of the parties to secure equality and reciprocity between them.

DeGeofroy vs. Riggs, 133 U. S. 258.

But in construing treaties with Indian tribes rules of interpretation favorable to them are to be adopted.

The Kansas Indians, 5, Wall. 737.

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be construed only as used in the latter sense. * * * * How the words of the treaty were understood by this unlettered people rather than their critical meaning should form the rule of construction."

Worcester vs. State of Georgia, 6 Peters 515, 582.

This language was cited and approved by this Court in *Choctaw Nations vs. United States*, 119 U. S. 1, 27, the Court adding:

"The recognized relation between the parties to this controversy therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is extended by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules formed under a system of municipal jurisprudence, formulating the rights and obligations of private persons equally subject to the same laws."

It will be observed that the Act of Congress conferring jurisdiction upon the Court of Claims in this case, is a duplicate of the one in that, so far as it relates to any question that can be raised.

The Court below assumed that the main treaty of Sept. 26, 1833, required all of the Indians without regard to their residence, to emigrate west of the Mississippi, and upon this assumption say: "It would be remarkable indeed if they agreed to a supplementary and subsidiary clause to said treaty, the effect of which would be to permit so many to remain in the State of Michigan" (41) as is claimed: but the assumption being groundless the wonder should cease. The main treaty did not touch those parts of the reservation situate in Michigan and did not include an Indian residing upon them. The portion thereby ceded is men-

tioned in Art. 1st, as the five million acres "along the western shore of Lake Michigan," the land and Indians included being further identified in the latter part of Art. 2d, as follows: "It being understood that the said Indians are to remove from all that part of the land now ceded which is within *the State of Illinois* immediately on the ratification of this treaty, but to be permitted to retain possession of the country *north of the boundary line of the said State* for the term of three years." The Michigan part of the band were not in it at all. They were not parties to it, and it of course, contains no provisions applying to any except those who were parties.

As the Indians were all to share alike in the benefits promised by the treaty whether they emigrated west or remained east, how many remained ought to be a matter of indifference to the defendants. Nor would it cost the government more in land if a large, instead of a small number remained, no reservation being provided for them in Michigan in exchange for the land ceded. It would even cost the defendants less, for those remaining in Michigan were not to receive any assistance from the government in removing to the northern part of the State or subsistence afterwards. They were to look out for themselves. And they have had no assistance since. Even the place where they were to go was left without limit or bounds. They were to receive their annuities at L'arbre-Croche but their place of residence was not fixed otherwise than as "the northern part of the peninsula of Michigan." While, as to those emigrating west, Art. 2 of the main treaty provides: "They shall be removed at the expense of the United States, and shall receive subsistence while upon

the journey, and for one year after their arrival at their new homes;" but until prepared to emigrate they were required to occupy that part of the reservation north of the Illinois state line. There is no language either in the main or supplemental treaty making it compulsory upon any of the Michigan part of the tribe to go west, while the last of the supplemental articles negatives such an idea by providing they might remain in Michigan. All required of them was that they should vacate their lands within three years. The policy of the United States in making the treaty as stated in the opinion is a conclusion drawn outside of the treaty. But as a matter of fact the Michigan Indians refused to join in any treaty requiring them to emigrate west. In no way could the Michigan part of the reservation have been secured but by exempting them from removal west.

However the Court find that when the treaty became operative 1,100 of the Indians did not emigrate west but did, in fact, remain in Michigan. (XI., 35) Finding II. divides them into two classes, viz: Those who continued to live in southern Michigan, and those who removed to the northern part of the peninsula of Michigan in obedience to the supplementary Article of the treaty (30). It is true it also adds that "most of them remained in southern Michigan," but as finding VIII. fixes the number remaining in southern Michigan at 250 (34) and finding XI. says the two classes together numbered 1,100 (35) the error in the statement is made apparent and corrected. A portion of the 250 are represented by me in case No. 1,125, while all of the 850 Indians who obeyed the treaty by going north are represented by me only in the same case. (XII,45)

That these 1,100 Indians were all entitled to a proportion of the annuities promised under the twelve prior treaties mentioned when the one in question was made, and that the defendants had received and held the consideration therefor, is admitted. That the claimants ever received anything upon the annuities west of the Mississippi, is not claimed. That they received nothing upon them elswhere except the $75,162.50 paid from 1843 to 1866 to those parts of the Pokagon and Nottawasepi bands mentioned in the letter of E. B. French (XIV., 35) is not denied. That the 850 removing to the northern part of Michigan in obedience to the treaty had no part of this sum and those who did not obey it, but remained in Southern Michigan, got the whole of it, is also admitted.

But the treaty was made in September, 1833, and none of the Indians in Illinois or elsewhere were required to go west before three years thereafter. Wherever they might be they were entitled to share equally in the annuities during those three years. Of the former annuities $80,000 was payable for the year 1836, and in addition $14,000 under Art. 3 of the main treaty, and $2,000 under the 2d supplemental Article, making a total payable to the entire band for 1836 of $96,000. Of this, for that year, the 850 were entitled to be paid $16,518.22: but the Court denied them even this pittance.

Where any of the Indians were to emigrate west the government was to see that they did so and provide means for them to go with and also subsistence afterwards. But it did nothing of the kind as to the 850. Instead it allowed them to remain in Michigan without exercising the power of removal if it had it.

Whenever it attempted to exercise such assumption of power probably it was only against those who did not vacate the reservation within the three years limited so that the white man could get it. Indeed it was not until seven years after the time fixed for them to leave the reservation that the government recalled their existence at all, and then (judging by results) only to a limited extent; but the terms of the treaty as to the persons to whom and the place where the money was to be paid, were forgotten—or violated.

In contracts providing for liquidated damages or a forfeiture, compensation usually takes its place. The injurious consequences of a failure to do the thing agreed upon are always to be considered, and if the omission to do this act would, according to the terms of the contract subject the party to a loss wholly disproportionate to the injury to the other party, the contract does not control, the recovery being limited to the actual damages suffered for the non-performance; and if, in the case at bar, any of the Michigan Indians failed to comply with a provision of the treaty in regard to emigrating west, under the circumstances disclosed it might well be urged they should forfeit nothing thereby, the Government having received the consideration for the payments promised, and suffering no loss by reason of their remaining in Michigan, but being actually benefited by their doing so.

But it is unnecessary to urge any such proposition. Upon the question of who were exempted from removal west, the treaty speaks too clearly to leave room for construction. The 3d supplemental Article required them to remove from the Michigan part of the reservation within three years from that date, but

contained no intimation they should go west or where they should go; but the last Supplemental Article is specific, giving to that part of the tribe residing in Michigan the right to remain in Michigan. It included every one of them, giving to each equal rights and equal priviliges providing no way or pretext for a discrimination among them. Although a question of law the first finding of the court recites it as a matter of fact as follows:

"In an Article supplementary to the treaty of September 27, 1833, it is provided that a part of the band residing on the reservation in the Territory of Michigan" might remain therein (29). The Supplementary Article referred to designates and identifies those entitled to remain as "a part of the band residing on the reservations in the Territory of Michigan" without any exception. It did not and does not limit the right to "those parts of the Pokagon and Nottawasepi bands to whom the payments mentioned in the said letter of Hon. E. B. French were made, as shown in finding VII.," as is assumed by the Court and recited in finding XIV. (35). Not a word can be found in the treaty giving to parts of the Pokagon and Nottawasepi bands greater rights or priviliges than the other Michigan Indians.

All the Indians whose homes were upon the three reservations in Michigan, mentioned in Art. 1, of the supplementary treaty, joined in ceding them to the United States, and all alike should participate in their avails as well as in all benefits arising therefrom. Their interests in the things granted were the same. Their rights in the avails should be equal. Not one line can be found in the treaty subverting this obvious equity. Can the Court below be sustained in injecting

such a provision? Is that the "superior justice" proclaimed in the *Chactaw* case, which is to be meted out to the Indians? Not one Indian upon the 99 sections ceded is allowed to share in the consideration promised by the cession, but they were Pottawatomies (See the treaty of September 19, 1827, referred to in the' 1st Supplemental Article 7 St. at L. 305:) and only a few of the Nottawasepis, or of those upon the 49 sections—for surrounding their homes. And the Court not only deny their right to pay for their reservation, but it goes further and refuses to allow them anything for their former annuities which had before been bought with a price, and in which they had a vested right, independent of the last tresty. It is safe to say no Indian executing it so understood the treaty or would have been a party to it if he had; and I refuse to believe that the Government entertained the purpose of making a treaty susceptible of working such a monstrous wrong to the Indians. The responsibility for it cannot be escaped by charging it upon a paymaster, for the construction of treaties is not within the line of a paymasters duty.

The option of remaining was given to the Indians and to no one else, and no one else could exercise it.

Nothing in the treaty limits the general works giving the right to remain alike to the Indians upon all the Michigan parts of the reservation, unless it be the provision in regard to their removal to the northern part of the peninsula. The Court, however, found this was not a condition precedent to their right to participate in the fnnd, and if it was the defendants had waived it as to the 250 remaining in Southern Michigan by permitting them to remain there. With this con-

clusion no fault is found, but in the opinion of *Nott, J.* that if any of the Indians are entitled to be paid they are "those who went north in conformity with the intent of the supplemental article" is insisted upon also as sound upon every principle of law and equity.

Two computations of the share and proportion of the former annuities belonging to the Michigan Indians are presented. The first is based upon the theory that all the Michigan Indians remaining east, viz., 1,100, were entitled to share in them. The other that only the 850 going north were entitled to participate. The number west each semi-decade is taken from findings VIII. (34), but as the increase of those east is not found the original number is maintained. The amounts payable each semi-decade are computed directly from the treaties, thus avoiding the mistakes in the Department table which the Court below adopted in finding VIII. (34) and had to correct in finding IX. (34 and 44). As the numbers west and east and the annuities being permanent, do not change after 1866 the computation by semi-decades stops there, and the balance is computed upon the proportion then existing up to and including 1892.

Computations:—

YEARS.	INDIANS WEST	INDIANS EAST.	ANNUITIES.	PER CAPITA	CLAIM'TS SHARE
1836.....	3840	1100	$ 80000	16.19	$17809
1841.....	3390	1100	400000	89.09	97999
1846.....	2231	1100	345000	103.57	113927
1851.....	3914	1100	262500	58.33	64163
1856.....	3181	1100	146500	34.22	37642
1861.....	2142	1100	111500	34.39	37829
1866.....	2202	1100	111500	33.74	37114
1892.....	2202	1100	579800	175.59	193149
TOTAL.....			$2,066,800		$599,632

YEARS.	INDIANS WEST	INDIANS EAST	ANNUITIES.	PER CAPITA	CLAIM'TS SHARE
1836.....	3840	850	$ 80000	17.06	$14501
1841.....	3390	850	400000	94.34	80189
1846.....	2231	850	345000	111.97	95174
1851.....	3914	850	292500	61 39	52181
1856.....	3181	850	146500	36.34	30889
1861.....	2142	850	111500	37.26	31671
1866.....	2202	850	111500	36.53	31050
1892.....	2202	850	579800	189.97	161474
TOTAL.....			$2,066,800		$497,129

ANNUITIES FOR THE RESERVATION:

Only the annuities payable under former treaties have thus far been dealt with. But the claimants are also entitled to share in the same proportion in the annuities payable for the reservation sold and ceded by the treaty of September 26 and 27, 1833, and upon which they then resided. For the Illinois part, 20 annuities of $14,000 each was promised, and for the Michigan part of it 20 annuities of $2,000 each was agreed to be paid. The Court below allowed the 250 Indians mentioned to share in the $2,000 annuities upon the same ratio as in the former annuities, thus giving the balance to the western Indians, but gave them no part of the $14,000 annuities promised by the main treaty in payment for the reservation, and yet by the supplementary treaty all the Michigan Indians became parties to it and entitled to participate in that fund. The language is very clear and specific. The provisions bearing upon the proposition should be read together, and being so read there is no escaping this conclusion. They are as follows:

Main treaty, Art. 3. "And in further considera-

tion of the above cession, it is agreed that there shall be paid by the United States the sums of money hereinafter mentioned, to-wit: * * * *

"Two hundred and eighty thousand dollars to be paid in annuities of $14,000 a year for twenty years."

Articles Supplementary, Art. 2. "In consideration of the above cession it is hereby agreed that the said Chiefs and Head-men and their immediate tribes shall be considered as parties to the said treaty to which this is supplementary, *and be entitled to participate in all the provisions therein contained as a part of the United Nation*; and further that there shall be paid by the United States the sum of $100,000 to be applied as follows: ($60,000 is here given for specific purposes.) And $40,000 to be paid in annuities of $2,000 a year for twenty years, *in addition to the $280,000 inserted in the treaty*, and divided into payments of $14,000 a year."

Words cannot be used that would make the proposition plainer. While the last Supplemental Article provides that "the just proportion of all annuties payable to them under former treaties, and *that arising from the sale of the reservation* on which they now reside, shall be paid to them at L'Arbre-Croche." The claimants ask their "just proportion" of the annuities arising from the sale of the reservation under the main treaty to which they became parties and "entitled to participate in all the provisions therein contained," as well as their proportion of the annuities arising from the sale of the Michigan part of it. And why should they not have it, since the Western Indians have their proportion arising from the sale of the Michigan part?

No part of these annuities before 1836 are claimed and a computation of the amount due for the rest of the years they would run computed by semi-decades on the basis mentioned produces these results:

YEARS.	INDIANS WEST	INDIANS EAST.	ANNUITIES.	PER CAPITA	CLAIM'TS SHARE
1836	3840	1100	$ 16000	3.24	$ 3564
1841	3390	1100	80000	17.82	19602
1846	2231	1100	80000	24.02	26422
1851	3914	1100	80000	15.95	17545
1853	3914	1100	32000	6.38	7018
TOTAL			$288,000		$74,151

YEARS.	INDIANS WEST	INDIANS EAST	ANNUITIES.	PER CAPITA	CLAIM'TS SHARE
1836	3840	850	$ 16000	3.41	$ 2898
1841	3390	850	80000	18.87	17039
1846	2231	850	80000	25.96	22066
1851	3914	850	80000	16 79	14271
1853	3914	850	32000	6.72	5712
TOTAL			$288,000		$61,986

THE FIVE MILLIONS OF ACRES WEST OF THE MISSISSIPPI RIVER:

This was given the tribe also in payment of that part of the reservation along the western shore of Lake Michigan ceded to the United States by the main treaty. The Supplementary Articles making the Michigan Indians parties thereto, and "entitled to participate in all the provisions therein contained," of

course gave them a right to share in the reservation west precisely the same as the main tribe. So long as this consisted of a mere right of occupancy the interest of the Michigan Indians was limited also to that, but when this right was sold to the United States the eastern Indians had a right to share in the avails of the sale.

By the treaty of June 17, 1846, the western reservation was sold and ceded to the United States, the defendants, in Article 3 thereof, promising to pay the Pottawatomie Indians therefor $850,000 subject to the conditions, deductions and liabilities provided for in subsequent Articles. The deductions and liabilities mentioned amounted to $207,000, leaving a balance going to the Indians of $643,000, and this balance by Article 7 it was agreed should "remain with the United States in trust for said Indians, and an interest of five per cent. annually be paid thereon, commencing at the expiration of one year after the removal of said Indians and continuing for thirty years and until the Nation shall be reduced below one thousand souls;" and their number was never reduced below that limit. By Article 6 the removal was to be effected within two years, making the first installment of interest payable in 1849.

7 St. at L. 855.

The interest upon this trust fund is $32,150 a year, and the amounts payable to the Michigan Indians from 1849 to 1892, both years inclusive, computed by semi-decades upon the same basis as the annuities, appears in the following tables:

YEARS.	INDIANS WEST	INDIANS EAST.	TRUST FUND	PER CAPITA	CLAIM TS SHARE
1851.....	3914	1100	$ 96450	19.23	$21153
1856.....	3181	1100	160750	37.55	41305
1861.....	2142	1100	160750	49.58	54538
1866.....	2202	1100	160750	48.68	53548
1892.....	2202	1100	835900	253.15	278465
TOTAL.....			$1,414,600		$449.009

YEARS.	INDIANS WEST	INDIANS EAST	TRUST FUND	PER CAPITA	CLAIM TS SHARE
1851.....	3914	850	$ 96450	20.24	$17204
1856.....	3181	850	160750	39.87	33889
1861.....	2142	850	160750	53.72	45662
1866.....	2202	850	160750	52.66	44761
1892.....	2202	850	835900	273.88	232798
TOTAL.....			$1,414,600		$374.314

In the absence of a provision fixing a time when the Michigan part of the tribe must go upon the reservation west of the Mississippi in order to participate in that provision of the treaty, the Court cannot interpolate a limitation upon the exercise of that right. Besides, having no home assigned them elsewhere, it was probably contemplated that portions, if not all of them might ultimately abandon the idea of remaining in Michigan and conclude to join their friends west, and hence a door was to be kept open for them at any and all times, at the home of the tribe. No other construction would be equitable for, as to them, it would allow the United States to get something for nothing and upon conditions not written in the treaty. That would not be such an interpretation of the acts

and promises of the government as justice and reason demand so long as the defendants received and still retain the consideration for keeping the reservation open. Its door should not now be made to swing upon a merely legal hinge invisible to this unlettered people, even if the judicial eye can discern one.

This right to change their residence has also been recognized by the departments when contemplating the amounts due the Michigan Indians for the different semi-decades mentioned, from 1843 to 1866, these being based upon the proportion those east then bore to the Indians west, the numbers varying with each period (34).

And finally the Congress have not only recognized the right of the Michigan Indians to share in this trust fund arising from the sale of the reservation west of the Mississippi in 1846, but have expressly declared as much in the joint resoluion of July 28, 1866, mentioned in the act referring this matter to the Court of Claims. After providing for the payment of $39,000 to the Michigan Indians, the resolution reads as follows:

"Said sum of $39,000 is to be paid *out of funds of said Indians* by the United States now held in trust for said Nation, drawing interest at the rate of five per cent., which amount is hereby appropriated, said payment to be made per capita direcet to the heads of families, adults, and guardians of minors, as is now required by law in reference to annuities by the proper agent of the government." It was approved by the President.

L. of Cong. 1865—1866. p. 370.

The legal and equitable construction of the treaty

contended for, therefore, seems not only to have already received the sanction of two branches of the government, but in addition, the defendants have been benefitted thereby, actually saving $39,000 by thus reading it, which otherwise the United States must have paid out of the National Treasury. Can the question now be considered open to discussion?

RECAPITULATION OF COMPUTATIONS.

On the basis of 1,100 Michigan Indians sharing in the fund:

Proportion of "former annuities"	$ 599,632.
Proportions of annuities for reservation	74,151.
Proportion of Trust Fund	449,009.
TOTAL	$1,122,792

On the basis of 850 Michigan Indians sharing in the fund:

Proportion of "former annuities"	$ 497,129.
Proportion of annuities for reservation	61,986.
Proportion of Trust Fund	374,314.
TOTAL	$933,429.

PAYMENTS.

It is conceded the total payments by the defendants to the claimants upon the amounts mentioned aggregate $75,162.50 and that whatever is payable to the claimants since and including 1836 above that sum is unpaid. And is is found by the Court below that this

sum was paid to and received by portions of the Pokagon and Nottawasepie bands of Pottawatomies only and none of it was paid to the 850 who removed to the northern part of the peninsula of Michigan, nor to any upon the 99 sections mentioned. The defendants made no attempt to pay an Indian at L'Arbre-Croche, or in any way to comply with the treaty in that regard. (35) The amount paid cannot be charged in gross against the tribe, for it was an unauthorized act, although a good payment as to those who accepted it in Southern Michigan for so much as was paid, but beyond this it has no force. Besides the money due under the treaty was payable per capita and the sums paid can only operate and be charged as a payment against the persons receiving it. Those to whom it was paid should answer for it and those to whom it was not paid but were entitled to share in it, should be made whole. It is the fault of the government and not of the Indians that the payments were not made to those entitled and the government should be made to right the wrong. Justice should not be done by halves.

THE DECREE.

This should specify and declare what Indians are entitled to participate in the fund, and hence to share in the allowance made, and so fully and distinctly that no confusion or contention over who are to be embraced in the distribution can ever arise either in Congress or in the Departments in the future.

If the award is upon the basis and proportion of 1,100 Indians east to those emigrating west, it should

declare that all the Indians residing upon those parts of the reservation in Michigan described in Article 1st of the Supplementary Articles dated September 27, 1833 when the treaty became operative, and who remained in Michigan, were entitled to share equally in the benefits promised by the treaty and they and their descendants are entitled to share equally in the judgment rendered in this case, but in the distribution to be made of the fund by the United States, that the sum of $75,162.50 heretofore paid portions of the Pokagon and Nottawasepi bands of Pottawatomies, be deducted from the shares of those who or whose ancestors received it, as shown by the receipt-rolls from 1843 to 1866 inclusive in the office of the Second Auditor of the Treasury, and not from the proportions going to the other claimants. It will be observed that the number of Indians receiving those payments varied each year and in no way can justice be attained, except by charging each with what he received in the manner indicated.

But if only the 850 who in obedience to the treaty removed to the northern part of the peninsula of Michigan are entitled under the treaty to the benefits promised by it, the decree must be shaped accordingly, but in that case the payments mentioned should not be deducted from the amount found due, for none were made to them, all having been received by the Indians remaining in Southern Michigan.

JOHN B. SHIPMAN,

Att'y for Claimants.

148 U S 691

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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

THE POTTOWATOMIE INDIANS OF MICHIGAN AND INDIANA,
Appellants,
vs.
THE UNITED STATES. TERM NO. 1133.

PHINEAS-PAM-TO-PEE AND 1371 OTHER POTTOWATOMIE INDIANS OF MICHIGAN AND INDIANA,
vs.
THE UNITED STATES. TERM NO. 1125.

BRIEF BY JOHN CRITCHER.

A tribe of Indians known as the Chippewa, Ottowa and Pottowatomie Indians, now known as the Pottowatomie Indians, once inhabited a portion of the territory comprising the States of Ohio, Indiana, Illinois, Wisconsin and Michigan. With these Indians the United States made various treaties, beginning with the treaty of 1795. For the considerations therein expressed, the Pottowatomie Indians ceded to the United States about 25,000,000 acres of land. About the year 1830 it became the policy of the Government to remove these Indians to reservations west of the Mississippi. In pursuance of this policy and by the treaty of the 26th of September, 1833, the United States acquired their remaining lands about 5,000,000 acres for the consideration expressed in the treaty (Vol. VII, p. 431) and the Indians agreed to remove to the reservation west of the Mississippi.

But the Pottowatomie Indians, who resided on three small reservations in Michigan refused to become parties to the treaty of September the 26th, but on the 27th of September they were persuaded to sign "articles supplementary" in which they ceded to the United States "all their land situate in the territory of Michigan south of Grand River, being the reservation at Notawarsepe of four miles square contained in the 3d clause of the 2d article of the treaty made at Chicago on the 29th day of August, 1821, and the 99 sections of land contained in the treaty made at St. Joseph on the 19th of September, 1827, and also the tract of land on St. Joseph River opposite the town of Niles, and extending to the line of the State of Indiana on which the villages of To-pe-ne-be and Pokagon are situated, supposed to contain about 49 sections. Same Vol., 442, Article 1st.

The Pottowatomie Indians residing on these three reservations thus became parties to the treaty of the 26 September, 1833, agreeing to go West and participating in all the provisions therein contained, as a part of the united Nation, and, in addition, receiving one hundred thousand dollars for their particular reservations aforesaid, known as band reserves, secured to them by treaties as above recited.

It will be seen by reference to the treaty of September 26, 1833, and the articles supplementary, that all the Pottowatomies, including those on the reservations in Michigan, agreed to go West and to accept the provisions made for them in the treaty of the 26th September, namely, 5,000,000 acres of land west of the Mississippi, $100,000 to satisfy sundry individuals, $150,000 to satisfy other specified claims, $100,000 to be paid in goods, etc, $280,000 to be paid in annuities, $150,000 to be applied to the erection of mills, farm houses, Indian horses, blacksmiths' shops, etc., $70,-

000 to purposes of education, etc. Such were the specific provisions made for the Pottowatomies who agreed to go West. Of course they retained all the annuities and benefits due them under former treaties in consideration of former cessions of land. And the Pottowatomies of Michigan received in addition for their band reserves one hundred thousand dollars, as follows: $10,000 to pay sundry individuals, $25,000 to pay certain claims, $25,000 to be paid in goods, etc., and $40,000 to be paid in annuities of $2,000 a year for twenty years.

But, there was a "*part of the band*" residing on the reservations in the territory of Michigan, who, on account of their religious creed, requested permission to remove to the northern part of the peninsular of Michigan, and it was agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they then resided should be paid them at L'Arbre Croche," p. 445.

Such were the provisions made for this "*part of the band*" who were exempted from removal West.

All other Pottowatomies residing on the lands thus ceded to the United States were under treaty stipulations to go West and share the lands, annuities and other provisions made for them in the treaty.

Accordingly, in 1836, the Government removed all the Pottowatomies residing on these lands, as well the Michigan Pottowatomies as the others west of the Mississippi, exempting that "part of the band" only, mostly Pokagon's band, numbering about 250, as they had adopted the religion and the civilization of the whites. These, and these alone were not arrested and removed West, but were permitted by the Government to remain in Michigan. All the others were removed West, except those who hid from the officers

or fled to Canada, many of whom subsequently returned to Michigan.

That "part of the band" who were exempted from removal West and there descendants, have brought this suit to recover their "just proportion" of all annuities payable to them under former treaties and that arising from sale of the reservation on which the band resided in 1833. Vol. VII p. 445

On the 27th June, 1892, the Court of Claims rendered judgment in our favor for the sum of $104,626, and found that our proportion of the perpetual annuities amounted to $2,081.00, which if capitalized at five per cent. would add to the judgment the sum of $41,-626, making a total of $146,259.

We complain of five errors in this judgment:

First. Cause No. 16,842 should not have been consolidated with Cause No. 16,743, but dismissed.

Second. In dividing the annuities between the Pottowatomies West and the band East, the court did not adopt the proper ratio of division.

Third. The annuities due under the several treaties amount to $1,620,800 instead of $1,432,800, as found by the court.

Fourth. The annuities arising from the sale of the reservation on which the petitioners resided is not allowed them as provided by the last clause of the treaty of September 27th, only a certain proportion $3,653.60.

Fifth. We are allowed a certain proportion of the permanent annuities, but the permanent annuities and the sum of money that yields them being equivalent, the same might be capitalized at five per cent.

The petition in 16,842 should have been dismissed.

1. In pursuance of the Act of Congress to ascertain the amount due the Pottowatomie Indians of Michigan and Indiana, approved March 19th, 1890, on the 14th April, 1890, a petition was filed in the Court of Claims, No. 16,743, by the Pottowatomie Indians of Michigan and Indiana by their legally appointed agent and attorney, "in behalf of all the Pottowatomie Indians of said States." This covered the ground. But on the 5th November, 1890, another petition was filed in the court, No. 16,842, on behalf of Phineas-Pam-To-Pee and 1371 other individual Indians, and these two causes were consolidated.

It is obvious from the clause of the treaty that the United States contracted with the band. The band alone can enforce the obligations of the treaty. Individuals cannot enforce treaty stipulations, whether Indians or Saxons. A citizen Indian may buy a horse or sell his land; but no individual, Indian or Saxon, can enforce the stipulations of a treaty. Otherwise, as many suits may be brought as there are Indians in the band; indeed, more, for every Pottowatomie Indian abiding in Michigan or Indiana might bring his suit, which would lead to endless litigation, to confusion, delay and injustice.

When Indians become citizens they do not lose their annuities; but to transact tribal business, they are required to resume tribal relations, and, where necessary, to appoint their agents and attorneys in a prescribed manner, subject to the approval of Government; that the Government may know with whom they are dealing, and that transactions once concluded may never be reopened or questioned. This course is obviously indispensable to the transaction of business between the Indians and the Government.

It is said in petition No. 16,842 that but 91 Indians are represented in 16,743. It is true the attorney in 16,743 represents that "part of the band" only who were exempted from removal West by the last clause of the supplemental treaty. The court has found that this "part of the band" numbered 291. When, therefore, 91 Indians of this band assembled in council, elected a Chief, appointed an interpreter and a business committee who were specially empowered by a vote of said Indians in council to make and enter into this contract as their tribal authority on the part of themselves, and the band with their agent and attorney, this was deemed sufficient to enable them to bind the band by the contract that was made. It was so considered by the Indians; by the Commissioner of Indian Affairs, who approved the contract; and by the Secretary of the Interior, who likewise approved it. There are to-day no objectors of record. How could a band of 300 in two States and four counties be expected to assemble in one place to make a contract? Could they leave their homes, the old and young, the feeble and sick, their movables and stock, to make a contract? Are not two-fifths a sufficient representation of the whole? When these Indians ceded to the United States 5,000,000 acres of land, only 77 Indians signed the contract. When the Michigan Indians ceded to the United States all their reservations only 44 Indians signed the contract. When the Pokagon band yielded their last reservation, only eight Indians signed the contract. If these numbers suffice in transactions so important, surely 91 out of 291 must suffice to engage the services of an attorney!

The petition in 16,842 has no precedent in legal procedure. At best, it was superfluous. It should not have been consolidated with No. 16,743; but dismissed.

2d. In the division of the annuities between the

Pottawatomies West and the band East, what is the proper ratio of division?

The Court of Claims have found that the annuities due the Pottawatomies West and East, under certain treaties, amount to the sum of $1,432,800; and the question is what is the proper ratio of division; or, our just proportion of these annuities?

From 1795, the date of the first treaty, annuities have been distributed among the Indians, *per capita*; and since the separation in 1836, whenever distributed, they have been distributed according to their relative number *at the time of payment*. This is so plainly just that neither the Government nor the Indians have ever expressed dissatisfaction with it.

To find our "just proportion," shall we take the ratio of the court? that is, average the number of Indians for thirty-six years, from 1836 to 1872; or, take the ratio of the department by ascertaining their relative number every five years; or, should we distribute what is now due according to their relative number, as ascertained by the latest enumeration of the Indians?

If we distribute this money among the Indians *per capita*, according to their relative number, why should we go back to a past generation to obtain an average instead of the latest enumeration? or, why should the department in its tables make a stop every five years to reach a fair distribution of this fund now? It was right to make a stop whenever annuities were paid, but no reason can be assigned for making such stops where nothing is paid. Strange to say, the department has allowed us our ratio of the accruing perpetual annuities upon the basis of the latest enumeration. Why not allow us our ratio of the unpaid annuities upon the same basis? The latest enumeration of the Indians furnishes the nearest approximation to the

justice and right of the case that it is practicable for a judicial tribunal to reach. On p. 14 will be found a statement of our claim, under each of the three methods.

III. To whom is due the annuity of $2,000 for twenty years, granted by the last clause of the Supplemental treaty?

It is held by the Court of Claims that this annuity should be divided between the Pottowatomies West and that "part of the band" who were permitted to remain East in the ratio of 291 to 3103. Supplemental treaty of September 27, 1833, p. 445, same Vol.

Besides the language of the clause, the court assigns its reasons for this decision:

First. the emigrating Indians should not lose their right to participate in this fund. But the Indians who remained did lose their right to participate in the 5,000,000 acres West, in the $850,000 given by the treaty of the day before, in all the other provisions of the supplemental treaty, thereby increasing the dividend of the Indians removing West, and only receiving about their share of the ~~revenues~~ proceeds of the land ceded on the 27th.

Second reason. They were not parties to it, and their rights should not be affected by it. We must take the treaty as a whole. If the emigrating Indians are not bound by each and every clause of the treaty, then the Indians East are entittled to no part of this fund.

Third reason. The remaining Indians simply obtained by the additional article, exemption from the obligation of removal and the right to enjoy their share or "just proportion" of the money arising from

the provisions and stipulations of the treaty. Here, then, in the opinion of the court are the considerations for ceding the reservation on which this part of the band then resided, "exemption from the obligation of removal." They were under no obligation to remove. On the contrary, they had secured by treaties with the United States, the right to reside on these reservations. See 3d Clause, 2d Article of treaty of 29 Aug., 1821, and the treaty made at St. Joseph on the 19th Sept., 1827. And they cannot be made to pay twice for the same thing. They had purchased the right by former cessions of land. Also, the court adds, they obtained the right to enjoy their just proportion of all annuities arising from former treaties. This right was theirs. No power could lawfully take from them their just proportion of former annuities acquired under treaties for valuable consideration. So that it is manifest, the Indians who remained received nothing for their lands, except their reasonable proportion of the purchase money, represented by this annnity, whilst the Indians emigrating sustain no injury by this construction, but profit by our remaining East.

For several decades, perhaps longer, the Interior Department and the committees of Congress, without exception or controversy, have construed this clause of the treaty to give "this part of the band" exempted from removal West the annuity of $2,000 for 20 years. The Indians themselves have so understood it. I say the Indians themselves; because, if they had understanding enough to make a contract with the United States relinquishing their last earthly possession, we must presume they had understanding enough to know its meaning. This construction of the clause has been agreed upon, and published in various forms year after year by both contracting parties; and this

part of the band agreably to this understanding, soon after the treaty was made, received one full annuity of $2,000. We now claim the remaining annuties, $2,000 a year for 19 years or $38,000.

The clause of the treaty reads thus:

"And, as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan, have requested, on account of their religious creed, permission to remove to the northern part of the peninsular of Michigan, it is agreed that in case of such removal the just proportion of all annuties payable to them under former treaties and that arising from the sale of the reservation on which they now reside shall be paid to them at L'Arbre, Croche." Vol. 7, p. 445.

This clause, we maintain, gives this band their just proportion of all former annuties, and the annuity arising from the sale of the reservation on which they then resided. This is the only annuity given by the supplemental treaty. Who are better entitled to an annuity arising from the sale of a reservation than the Indians who resided upon it? A fair construction of the clause gives them the annuity. It was so understood by both contracting parties, when one full annuity of $2,000 was paid to this part of the band soon after the treaty was made. And if the court is prepared to sustain the elevated views expressed in the Choctaw case we may say: "The language used in the treaties with the Indians should never be construed to their prejudice. * * How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction." Choctaw Nation *vs.* the United States, 119 U. S.

The circumstances of this case will show the true meaning of this clause. These three small band re-

serves in Michigan, containing 106,000 acres had been secured by former cessions of land; the right to reside on them had been secured; their former annuties had also been secured by previous cession of territory —they had paid for these privileges. When, therefore, on the 27th of September, they entered into the supplemental treaty this band acquired nothing for "the reservation on which they then resided" but this annuity. The Court finds that this band consisted of 291 Indians, and that the whole
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5,000,000 acres West, their proportion of the $850,000 granted by the treaty of the day before and the whole of the $60,000 granted by the treaty of 27th of September, besides school funds, mills, etc.

This band relinquished everything, except this annuity; they numbered nearly one-third of the Michigan Indians; the reservation contained 106,000 acres; our reservation contained 49 sections or 31,360 acres. For this the United States agreed to pay us $2,000 a year for twenty years, or about $15,500 cash. If the full sum demanded were paid now, sixty years after the sale it would be equal to about $8,000 cash. The Honorable the Court of Claims, for 31,360 acres of land, has allowed us, 60 years after the sale, the sum of $3,653.60, which reduced to cash, at the time of purchase, would give these unlettered people—the wards of the Nation, for their lands the sum of $950.00 in cash; or about three cents an acre.

This decision shocks the conscience and the understanding.

Second point. If we are entitled to our proportion only of $38,000, surely we should share it with the owners of the fund—not with several thousand Indians,

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serves in Michigan, containing 106,000 acres had been secured by former cessions of land; the right to reside on them had been secured; their former annuties had also been secured by previous cession of territory —they had paid for these privileges. When, therefore, on the 27th of September, they entered into the supplemental treaty this band acquired nothing for "the reservation on which they then resided" but this annuity. The Court finds that this band consisted of 291 Indians, and that the whole population on the three reservations in Michigan consisted of 1100. The Indians removing West received of course, their proportion of all former annuties—their proportion of the 5,000,000 acres West, their proportion of the $850,000 granted by the treaty of the day before and the whole of the $60,000 granted by the treaty of 27th of September, besides school funds, mills, etc.

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Second point. If we are entitled to our proportion only of $38,000, surely we should share it with the owners of the fund—not with several thousand Indians,

strangers to the treaty of 27 September, 1833, having and claiming no interest whatever in the reservations then ceded. The Court of Claims has found, p. 34, finding XI, that the Michigan Indians numbered 1100, including the 291, exempted from removal West. To these 1100 Indians, the band reserves in Michigan belonged, acquired and guaranteed to them by former treaties above cited. *Among these* 1100 *Indians, all the other provisions of this supplemental treaty were divided.* No other Indians were parties to the supplemental treaty of the 27 September, 1833, or participated in any of its benefits. Yet, the court has apportioned this annuity ($38,000) among 3012 Indians, of whom nineteen hundred and twelve had not the remotest interest in the reservations sold, or the fund divided.

Now, if this fund be apportioned among the owners of the reservations instead of among strangers, the ratio will not be 291 to 2812, but 291 to 809, (1100—291=809). Instead of receiving $3,653.60 adjudged by the court below the amount due this "part of the band" would amount to the sum of $10,051.14.

Therefore, even if the Court of Claims has construed the clause of the treaty correctly, here is an obvious error in dividing the fund. But, we repeat the language of the clause as well as the justice of the case, clearly entitles this "part of the band" to the annuity "arising from the sale of the reservation on which they then resided."

IV. Annuities found to be due, but omitted from the tables.

The court finds (finding IX) that the annuities there enumerated, aggregating $188,000, have not been paid, p. 34; but concludes, p. 44, that the sum of $134,368.-26 necessarily includes this claim, as that is an exhibit

of the full amount due the claimants under all the treaties.

It was, no doubt, intended to exhibit the full amount due the claimants under all the treaties; but the annuities enumerated are not embraced in the tables. The sum of $1,432,800 is the aggregate of the annuities which are embraced in the tables, and our share of that fund is found by the court to be $134,-368.26. But, if we examine the tables, we find that the annuity of $2,000 due under the treaty of October 16, 1826, for the year 1848 *is not in the table*, and cannot, therefore, be included in the sum of $134,368.26. So the annuity of $1,000 for the year 1848 due under treaty of September 20th, 1828 *is not in the table*, and, therefore, cannot be included in that sum. So the annuities of $15,000 each, under the treaty of October 20, 1832, for the years 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852 *are not in the tables*. So, an annuity of $2,000 for the year 1852, under treaty of October 26, 1832 is not in the tables, nor is annuity of $15,000 for the year 1844, under treaty of October 27, 1832 to be found in the tables, and, therefore, none of these sums are embraced in the sum of $1,432,800 or in our share of it, $134,368.26.

For example, by treaty of October 20th, 1832, an annuity of $15,000 was granted for twenty years. By the tables, we are allowed the annuity until 1843 for ten years. It then stops. The other ten years are blank. This is apparent to anyone who will examine the tables.

The annuties due under said treaties; but omitted from the tables, amounted to $188,000; of which our proportion, according to the ratio of the Court, is $17,-630.67; according to the five years ratio of the department it is $16,279.87, and according to relative number, by the latest enumeration, it is $23,983.56. Why

should this sum be distributed now among the Indians by taking the average number in a past generation, or making a stop every five years, a generation ago, instead of dividing the fund among them according to their relative number, as ascertained by the latest enumeration? See table of mixed annuities p. 5 of the record.

V. Our proportion of the permanent annuities should be capitalized.

To distribute six or seven dollars *per capita*, through all time, among 300 Indians dispersed through two States and four Counties, and annually becoming more so where there is no longer any Indian agency, is to impose great labor and expense upon the Government without benefit to the Indians. It might cost the Indian half the annuity, perhaps all, to reach the place of payment. The department and the Committees of Congress in stating this account have always capitalized the permanent annuties.

If the Court, instead of the perpetual annuity, should give the sum that yields it, both contracting parties would be benefitted. And it would seem to be in the power of the Court, for the one sum is the exact equivalent of the other.

The amount stands thus:

1. According to the *ratio* of the department, our proportion of former annuities, ...	$132,867 93
Add full annuity (this is conceded by the department) under treaty of Sept. 27, 1833, $2,000 for nineteen years, . .	38,000 00
	$170,867 93
Paid the memorialists, ...	75,162 50
	$ 96,705 46

Annuity of $2,844.87 capitalized at 5% per annum, equals, ...	56,897 50
	$152,602 96
Add perpetual annuities from June, 1872, to June, 1892—twenty years, . .	56,897 52
	$209,500 46
2. According to the ratio of the court, our proportion of former annuities, .	$134,368 26
Our proportion of the $3,800 annuity, .	3,653 60
Our proportion of annuities being amount due claimant from the perpetual annuities ($22,300) for 20 years, from '72 to '91, ...	41,626 00
	$179,646 86
Off payments to memorialists, . . .	75,162 50
	$104,485 39
Judgment for, ...	104,626 00
Leaving our proportion of perpetual annuities still due—if capitalized at 5% would amount to, ...	41,626 00
3. According to the latest enumeration, 322 to 2202, our proportion of the annuities would be, ...	$182,915 32
The annuity of $2,000 for 19 years, . .	38,000 00
Our proportion of perpetual annuities, $2,844.87 for 20 years, from 30 June, 1872, to June, 1892, ...	56,897 20
Perpetual annuities capitalized at 5%, .	56,897 20
	$334,709 72
Off payments made, ...	75,162 50
	$259,547 22

Add our proportion of omitted annuities,	23,982 56
Balance due, ...	$283,529 78

And such should be the decree of the court; even though it be found necessary to remand the cause, No. 1133, to the Court of Claims, with instructions to give the petitioners leave to amend their petition.

JOHN CRITCHER,
Of Counsel for Petition in 1133.

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TERM NO. 1133.

JOHN CRITCHER'S BRIEF, CONTINUED.

It is said, that the Indians, embraced in this clause of the treaty, have ceased to be a tribe; that they have become citizens of the United States; and consequently, that every man, woman and child among them may bring a suit to enforce the provisions of this treaty.

It must be remembered, that the treaty of September 27th, 1833, was made with a tribe; and that we are now seeking to enforce its provisions. Some of the beneficiaries of the treaty may have become citizens; but it is tribal property we are suing for, and we cannot sue the United States for tribal property otherwise than under S. 2103, R. S. U. S.

There is nothing in the Act of 19 March, 1890, conferring jurisdiction, that changes this law of procedure; it merely gives the Pottowatomie Indians of Michigan and Indiana the right to sue in the courts of the United States and, therefore, whatever analogies may appear, the plaintiffs have but the one path to travel, if they attempt to enforce the provi-

sions of a treaty between the United States and an Indian tribe—the remedy provided is plain, easy and adequate—any departure, in the case of Indians especially, would lead to endless labor, confussion, injustice and expense.

It is contended in No. 1125, that the Indians exempted from removal west, number 1371.

In 1836, all the Pottowatomie Indians residing on the three reservations in Michigan were removed west by the government, except about 250 (mostly Pokagen's band) and those who evaded the officers of the United States, or escaped to Canada. Finding X, p. 34. The few civilized Indians, who were permitted to remain, on account of their religious creed, were never molested by the officers; they were as well known then and their descendants are as well known now as the police of this city.

The United States government was charged with the duty of removing the Indians; also, with the duty of paying the annuities to those exempted from removal. The government was the trustee of the fund; and under every obligation to discharge the duties of the trust. Now, then, who better than the government knows who were entitled to remain, and who were bound to remove? The men who witnessed the treaty of 1833, paid the annuities in Michigan, in 1843. Every Indian's name appeared on the roll. Every Indian entitled to remain was paid. This continued for a quarter of a century. It continued in the midst of these petitioners in 1125. Once, so large a sum as $39,000 was distributed among my clients, and yet the petitioners in 1125 never objected; never claimed a dollar; never applied to Congress or the Department for any share during fifty-six years, until W. Shipman appeared upon the stage, about the time this Act was passed in 1890, p. 42.

By their silent acquiescense in the proceedings of the trustees (the United States) for half a century, the petitioners in 1125 testify in the strongest manner to the justness and validity of his acts. On the other hand, the petitioners in 1133, appeared by their agents or attorneys every year, it is believed, from 1836 to the present day, before the Department, or Congress or the Courts demanding, these annuities. Their number is found by the Court of Claims to be 291. Does this finding impart absolute verity and conclude both parties? Finding X, p. 34.

It is also contended that this "part of the band," who were exempted from removal west, have forfeited their annuities, because they did not remove to the northern part of the peninsular of Michigan.

The objects of the treaty were to acquire possession of these valuable reservations, and remove six or seven thousand savages west of the Mississippi, where a few civilized indians might settle, whether north, south, east or west, in Michigan, was immaterial. It was not an essential of the treaty. No more than the payment of the annuities at L'Arbre Croche was an essential. If the annuities are forfeited in the one case, the reservations are forfeited in the other. They were both nonessentials. Permission to remove was requested, and the request was granted; and in case of removal the government promised to pay the annuities at L'Arbre Croche. The place of payment was a point of prime importance to the Indians. To require 250 or 300 Indians to travel 250 miles and back to secure a small annuity, would impose upon them an expense equal, perhaps greater, than the annuity. So the government agreed, in case they remained, to pay them at L'Arbre Croche.

It was not a condition precedent. It was permission requested and permission granted. It is not every

condition, even that avows a contract. If it were, it has been waived by the government. In the language of the Court of Claims. "It cannot now be considered as an original question. The government, by its agents, laws and resolutions of Congress has treated the removal and continued residence in the northern part of Michigan as immaterial, and it is now too late to attempt to engraft upon the right of the Indians a removal and continued residence as a condition precedent to their right to participate in the funds arising from the various treaties made with the "United Nation." If it could be considered a condition precedent, it was waived by the United States, when for a quater of a century the government continued to pay these Indians their annuities under the clause in question. For half a century the government has recognized their rights under the treaty, and the act of your jurisdiction directs the Courts to ascertain any balance that may be due them. How far north must they go? Upon what line of latitude do their annuities became void? To declare void, for such cause, annuities arising from the session of their last acre would be a more cruel atrocity than was ever imputed to an Indian.

JOHN CRITCHER,
Counsel.

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In the Supreme Court of the United States.

OCTOBER TERM, 1892.

PHINEAS PAM-TO-PEE ET AL. vs. THE UNITED STATES. } No. 1125.

THE POTTAWATOMIE INDIANS, ETC., vs. THE UNITED STATES. } No. 1133.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

A. X. PARKER,
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STATEMENT.

This consolidated case comes up from the Court of Claims and involves the several claims made against the United States by the Pottawatomie Indians of Michigan and Indiana. Two independent petitions were filed in

the Court of Claims, representing substantially different classes of Indians. After the filing of the petitions, a motion was made on the part of the United States to dismiss the petition last filed, and the Court, upon deciding the case, denied this motion and directed the consolidation of the two cases. The first petition was filed April 14, 1890, in case numbered below, 16,743, (and in this court 1133), and represented the claims of about 291 Indians understood to be members of the Pokagan band. The second petition was filed November 5, 1890, in case numbered 16842 below (and No. 1125 here), and is supposed to represent some 800 or 900 Indians who constitute most of the Pottawatomie Indians remaining in the two States mentioned, aside from the Pokagan band.

The decision practically excludes those Indians included in the second petition from sharing in the funds contended for. It is conceded on the part of both classes of claimants that all payments going to any of those Indians were fully made by the United States up to the year of 1836.

Appeals are taken independently, on behalf of the two classes of Indians represented.

The controversy now brought before this court is understood to be mainly a controversy between the two classes of Indians represented by the two petitions referred to, and it is believed that under the findings made by the Court of Claims, and the elaborate opinion there given, the United States, defendant, is not called upon to present an extended argument or to assume the burden of the contention.

The suit, as consolidated, rests upon the *act of March* 19, 1890 (26 Stat. L., 24), which is set forth in full on page 1 of the record. The preamble of the act is as follows:

> Whereas, representatives of the Pottawatomie Indians of Michigan and Indiana, in behalf of all the Pottawatomie Indians of said States, make claim against the United States on account of various treaty provisions which, it is alleged, have not been complied with: Therefore,
>
> *Be it enacted*, &c., That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the said Pottawatomie Indians of Michigan and Indiana, and to render judgment thereon.

The court is to "review the entire question of difference *de novo*" and as though no settlement had been made or receipts in full taken.

By section 2 it is directed—

> That said action shall be commenced by a petition stating the facts on which said Pottawatomie Indians claim to recover, and the amount of their claims.

THE TREATY OF SEPTEMBER 26, 1833.

Under this act the questions involved in this investigation arise under the treaty made between the United States and the Indians now called the Pottawatomies, September 26th, 1833 (7 Stat., 431), and the "articles supplementary," which were dated September 27, 1833 (7 Stat., 442).

By the treaty of September 26 the Indians ceded to the United States their interest in about 5,000,000 acres

of land lying along the western shore of Lake Michigan, and are to receive in return the same amount of land lying west of the Mississippi River.

By article 3 the Indians are promised, in further consideration, $350,000, to be paid as therein specified, and also "$280,000 to be paid in annuities of $14,000 a year for twenty years." They are also to be paid further sums as in said article set forth.

The next article is as follows:

> ARTICLE 4. A just proportion of the annuity money, created as well by the former treaties as the present, shall be paid west of the Mississippi to such portion of the nation as shall have removed thither during the ensuing three years. After which time the whole amount of the annuities shall be paid at their location west of the Mississippi.

THE ARTICLES SUPPLEMENTARY, OF SEPTEMBER 27, provided as follows (p. 442):

> ARTICLE 1ST. The said chiefs and head-men cede to the United States, all their land situated in the Territory of Michigan south of the Grand River, being the reservation at Nottawasepi, of 4 miles square, contained in the 3d clause of the 2d article of the treaty made at Chicago on the 29th day of August, 1821; and the ninety-nine sections of land contained in the treaty made at St. Joseph on the 19th day of Sept., 1827; and also the tract of land on the St. Joseph River opposite the town of Niles, and extending south to the line of the State of Indiana, on which the villages of To-pe-ne-bee and Pokagon are situated, supposed to contain about 49 sections.
>
> ARTICLE 2d. In consideration of the above cession it is hereby agreed that the said chiefs and head-men

and their immediate tribes shall be considered as parties to the said treaty to which this is supplementary and be entitled to participate in all the provisions therein contained as a part of the United Nation; and further that there shall be paid by the United States the sum of $100,000 to be applied as follows: (Here follows a specific disposition of $60,000 of it.)

And then this is added:

And $40,000 to be paid in annuities of $2,000 a year for twenty years, in addition to the $280,000 inserted in the treaty, and divided into payments of $14,000 a year.

ARTICLE 3d. All the Indians residing on the said reservations in Michigan shall remove therefrom within three years from this date, during which time they shall not be disturbed in their possession nor in hunting upon the lands as heretofore. In the meantime no interruption shall be offered to the survey and sale of the same by the United States. In case, however, the said Indians shall sooner remove the Government may take immediate possession thereof.

On page 445 appears the following, signed by eight Indians but not signed by the commissioners:

On behalf of the chiefs and head-men of the United Nation of Indians who signed the treaty to which these articles are supplementary we hereby in evidence of our concurrence therein, become parties thereto.

And as since signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that, in

> case of such removal, the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid to them at L'arbre Croche.

It was contended in the court below on behalf of the defendant that the statute of 1890 only authorized one petition and, consequently, that the second petition filed gave no jurisdiction, but in view of the action of the Court of Claims it is not deemed necessary to urge the same objection here.

It has been contended also that the execution of the supplementary treaty of September 27 was informal and insufficient and not binding upon the United States. In view, however, of the consideration received by the United States and of the action taken by the officers thereof, and by Congress, in relation to this supplementary treaty, and in view of the findings set forth it is deemed proper that such treaty shall be regarded as duly executed and valid.

POINTS.

I.

THE UNITED STATES OWES NOTHING TO THE POTTAWATOMIES.

The Court of Claims says, Finding VII:

> No funds due the Pottawatomie nation have been reserved by the Government for the payment of the Indians of that nation residing in the States of Michigan and Indiana.

The fact exists beyond controversy, and is practically admitted by appellants, that all moneys becoming due from the United States to the Pottawatomies under all laws and treaties have been fully paid.

The amount of $39,000 paid under the joint resolution of 1866 was paid, not out of Indian funds, but out of moneys of the United States, and the Government has never been reimbursed.

Any sum paid in consequence of the litigation under review must, apparently, be paid out of the public moneys of the United States.

Therefore the question is not whether the United States shall pay to this tribe moneys that have been agreed to be paid, but whether the Government shall pay the amount claimed twice.

Whether under the act of March 19, 1890, these Indians have any valid claim under the paragraph quoted is one of the questions necessarily submitted.

II.

THE QUESTION WHETHER ANY OF THE INDIANS NOW MAKING CLAIM ARE ENTITLED TO ANYTHING UNDER THE PARAGRAPH APPENDED TO THE TREATY, SEPTEMBER 27, 1833, SUBMITTED.

The agreement claimed upon is clearly upon condition. The paragraph is as follows:

> And, as *since the signing of the treaty* a part of the band residing on the reservations in the Territory of *Michigan* have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that *in case*

> *of such removal* the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid to them *at L'Arbre Croche.*

First. The Indians must have then resided in Michigan.

Second. They must remove to the northern part of the peninsula, and

Third. The money must be paid at L'Arbre Croche.

The Indians now claiming are from Indiana and Michigan; they have not been paid at L'Arbre Croche; and, what is much more weighty, they never removed to the northern part of Michigan.

It is manifest that the purpose of the transaction on the part of the United States was to remove these tribes from a country which was valuable for agricultural settlement and was required by the needs of the population pressing westward.

The removal of the Indians was the principal object, and the vital condition of the whole transaction and agreement.

By the treaty (if this paragraph be held to constitute a part of the treaty) no money could ever accrue to the Indians then dealt with until they actually removed.

They never removed, the vital condition was broken, the purpose of the treaty was in so far defeated.

III.

NONE OF THE PETITIONERS ARE ENTITLED TO SHARE IN THE ANNUTIES GIVEN BY THE TREATY OF SEPTEMBER, 1833.

The treaty of September 26, and its supplemental clause made the 27th, constitute but one treaty.

The second article supplementary says that the "chiefs and head-men and their immediate tribes shall be considered as parties to the said treaty to which this is supplementary."

But the paragraph relating to part of the band treated with separately "on account of their religious creed" constitutes a different agreement.

Nothing accrued to them from the treaty made that day except a share "of all annuities *payable to them under former treaties*," and moneys to arise from the sale of the reservation on which they then resided.

Nothing accrued to them by the treaty made that day and on the previous day, the 26th of September, for that was not a *former* treaty, and all that was done on the 27th was merged into and made a part of the treaty of the 26th, this paragraph as well as the rest. This is manifest from the terms of the treaty itself, and it is the view that has always been taken by the committees of Congress.

The question of whether the United States shall pay is not here involved, but the question as to what class of Indians shall receive the moneys.

IV.

THE SUPPOSED BASIS OF COMPUTATION ACTED UPON.

By finding of Fact X (p. 34) the number of Indians understood to have emigrated beyond the Mississippi is stated as 2,812; and the number of those who remained in the two States under the provision added to the supplementary articles is stated as 291.

Finding XI states that it is impossible to accurately state the number of Indians who did not emigrate under the treaty or remain under the provision above specified, but says that the Indians remaining within these two states, including the 291, and those who managed to avoid emigrating and remained in contravention of the requirements of the treaty, numbered 1,100.

This would give the number of the class wrongfully remaining as 809. The opinion (p. 44) states the whole number claimed in case No. 16842, below, as coming within the intent of the supplementary article, as more than 1,200 persons.

The 291 Indians are those petitioning in case No. 16743, below (case 1,133 here), while those petitioning in case No. 16842, below (case No. 1125 here), who are stated to be 1,372 Indians, include the 809 mentioned.

It seems to be admitted and assumed by all concerned that the table set forth in the record (Finding VIII, p. 33) exhibits the amounts payable to the Pottawatomies according to the several treaties made, and included within the scope of the treaty of September 26, 1883.

A statement follows, on page 34, showing by semi-decades an enumeration of the Indians recognized as con-

stituting the classes entitled to payment, and located, respectively, west of the Mississippi and in the two States named, together with the amounts due the nation.

This table is used as the basis of the computation made, and is as follows:

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.
1836	3,846	250	4,090	$80,000.00
1841	3,390	273	3,663	400,000.00
1846	2,231	269	2,500	270,000.00
1851	3,914	287	4,201	214,500.00
1856	3,181	281	3,462	111,500.00
1861	2,142	304	2,446	111,500.00
1866	2,202	317	2,519	111,500.00
1871	2,202	322	2,524	111,500.00
1872	2,202	322	2,524	22,300.00
				1,432,800.00

From this table the averages of 291 to 2,812 are derived, and the total amount originally payable appears to be $1,432,800. Finding VII (p. 31) shows the amount paid, and to be therefore deducted, as $75,162.50.

To what extent the act of 1890 vests the Court of Claims, and therefore this court, with jurisdiction to determine such claims as may be made by one class of these Indians against another, and to determine such contentions as arise between a class within the treaty and one that has placed itself outside the treaty, must be left to this court.

Yet, it is respectfully submitted, the question is a fair one, whether Congress intended anything more than to cancel the settlement made under the act of 1866, and cancel the receipts then taken by the United States, and

charge the $39,000, paid under that act as a payment upon the general account, and ascertain and state the balance remaining unpaid to those of the tribe, within these States, and leave the adjustment and application and payment of the amount found due to stand subject to the further action of Congress or of the proper executive officers of the Government.

The average of Indians west of the Mississippi is stated as being 2,812; and of those east of that river as being 291, making the total average 3,103, of those recognized by the Government as belonging to the organization, or consolidated tribe of Indians, entitled to the funds which the Government is under obligation to pay.

If any sum is due from the United States to any of the Indians represented before this court, it is submitted that such sum is due to the 291 Indians who remained under the treaty.

The proportion of $1,432,800 represented by the fraction $\frac{291}{2,812}$ equals	$134,368.26
Same proportion of $38,000 ($2,000 annuity)	3,563.65
	137,931.91
Less payments admitted	75,162.50
	62,769.41
The same proportion of all former annuities (amounting to a total of $22,300)	41,626.00
Leaving (if any sum is due) a total of	104,395.41

While the Court of Claims gave a finding of the amount of $104,626 in favor of the Indians, it is believed that this amount was reached, substantially, upon the basis above set forth.

V.

THE UNITED STATES TREATED AND DEALT WITH THE TRIBE, NOT WITH INDIVIDUAL INDIANS.

All computations to be made in this case, and all conclusions to be reached therein, must be by considering the Indians involved, as a tribe, and not as individual Indian men or families. In view of the action of the Government, this requirement is not inconsistent with treating Pokagan's band, or the Catholic Indians, as a segregated portion of the tribe entitled to independent treatment.

The phraseology of the treaty shows the dealing of the Government to be with the tribe, and no treaty authorizes the payment to these Indians in disregard of the tribal organization. The resolution of 1866 (14 Stat., 370), is not applicable.

Any money due under these treaties is due to the tribe, and not to individuals. The Government in its dealings with Indians deals with the tribe. If individuals can bring suits to enforce treaty stipulations, there will be no end of suits. The law provides that Indians becoming citizens shall lose none of their tribal rights to annuities due them from the United States; therefore citizen Indians must still meet in tribal relations to transact tribal business.

So far as the Government is concerned in its payments it makes no difference whether the tribe or the aggregation of Indians includes 3,000 or 6,000 individuals.

The annuities are stated and fixed amounts.

VI.

THE INDIANS REMAINING IN MICHIGAN ARE ENTITLED TO NO PAYMENT FROM THE UNITED STATES ON ACCOUNT OF THE SALE OF THE RESERVATION WEST OF THE MISSISSIPPI RIVER.

The Indian title was only one of occupancy. The Pottawatomies who went west of the Great River became possessed of that right of occupancy which civilized nations concede to belong to Indian tribes living upon specified lands. Those Indians who by agreement were to remain east, and those who refused to obey and who evaded the efforts of the Government to locate them west, never had any occupancy, or any possession of any kind, and never had anything that can be recognized as an Indian title or right of use, or of occupancy, and had nothing in this connection to sell, and never became possessed of anything whatever, on account of the Western reservation for which they are entitled to payment.

VII.

ANNUITIES CAN NOT BE CAPITALIZED AND THE UNDUE PAYMENTS THEREOF SETTLED AND SATISFIED IN THIS SUIT.

It seems to be assumed in case No. 1125 that annuities may be reduced to their present worth and capitalized and go into the judgment in this suit in final settlement and payment.

No statute is quoted authorizing this and no precedent is cited.

The act of March 19, 1890, grants no right to make such a final adjustment.

That act grants to the court the right "to take jurisdiction of and try all questions of difference arising out of treaty stipulations" with the Pottawatomies of the two States.

The payment of annuities under established treaties, and in pursuance of conceded and admitted agreements and obligations, can not be treated by counsel or court as one of the "questions of difference" of which jurisdiction is given.

VIII.

SUBMISSION.

If this court has jurisdiction under the statute to cause equitable restitution by directing the United States to withhold from accruing annuities or future appropriations going to the Pottawatomies sufficient moneys to make good to a fragment of the tribe its share of moneys received and consumed by the main body of the nation, then perhaps practical equity can be accomplished, if the fragmentary portion is found to be entitled to anything.

The case is nowise free from obscurities.

Counsel is constrained to admit that the lines which may be claimed to mark the legal rights or the equities of the respective parties are not very clearly shown.

If the decision to be made by this court is to be used for the purpose of declaring as to the division and application of funds and annuities becoming payable after this date, the equities may not appear to be the same as in the case of calling upon the United States to pay to these separated individuals and families the moneys that have been once paid to the tribe, and that might have been re-

ceived by these scattered claimants if they had remained with their tribe.

The rule as to the future payment of unpaid annuities in the Treasury may well be quite different from a decision to be made as to the payment over again of moneys which have been once paid to the tribe, and which these claimants failed to get as individuals because of their own acts.

It is respectfully submitted that the enabling act is broad enough to give to this court authority to do full equity in determining the matters now brought before it.

The statute of 1890 gives to the courts "power to review the entire question of difference *de novo*."

The Indians are the wards of the nation, and their affairs in the premises as to the matters in controversy are with this court. An equitable distribution of the funds due to them is one of the duties of guardianship.

If anything is now to be paid to these Michigan Indians, then the Western Indians have been overpaid and should pay back; or what would be the same in effect, the decree of the court should direct that any moneys paid to the Indians of the two States named should be directed to be withheld from the funds held for, or future appropriations made to, the tribe.

It is to be hoped that this court may find itself authorized to determine the questions involved, in such a manner that they may not further perplex Congress or the courts.

The case is respectfully submitted.

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Assistant Attorney-General.

Transcripts
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Records

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